

# COMMENT

## DEFINING VIOLENCE ON THE BLACKBOARD: AN OVERVIEW OF THE TEXAS EDUCATION CODE'S APPROACH TO TEEN DATING VIOLENCE

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\* St. Mary's University School of Law, Candidate for Juris Doctor, May 2011; The University of Texas at San Antonio, B.A. English, 2008. I would like to thank my parents and my twin sister for their encouragement that keeps me motivated, for their laughter that keeps me smiling, and for their words that keep me strong. I would also like to thank my dear "HongGom," the man whose love has showed me what true happiness feels like and whose kindness showed me that love doesn't have to hurt. Last but not least, I would like to thank my "gurls" Jenna and Lauren whose friendship has kept me sane and happy and whose advice I'd be lost without. I hope my Comment enlightens those who were otherwise unaware of the seriousness of teen dating violence and adds to the growing aid available to girls and boys that need help getting out of a hurtful relationship.

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## I. INTRODUCTION

“Something’s happened to Ortralla.”<sup>1</sup> Just after four o’clock in the afternoon on March 28, 2003, the hallways of Reagan High School filled with chaos and panic as students and teachers screamed at the sight of Ortralla Moseley’s bloody body at the bottom of a staircase.<sup>2</sup> Ortralla had been stabbed six times, including stab wounds to her heart, back, and head.<sup>3</sup> Ortralla’s possessive and controlling boyfriend, sixteen-year-old Marcus McTear, inflicted the fatal wounds.<sup>4</sup> Earlier that day, Ortralla and Marcus were sent to the school security office after a teacher caught

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1. Jordan Smith, *A Shining Star Goes Dark*, AUSTIN CHRON., May 16, 2003, available at <http://www.austinchronicle.com/gyrobase/Issue/story?oid=OId:159800>.

2. *Id.* (detailing the events the day that high school student Ortralla Moseley was stabbed to death on campus by her boyfriend).

3. *Id.* (describing the brutality of Ortralla Moseley’s murder).

Ortralla was stabbed six times: once through the chest, into her heart; once through the back, piercing her left lung; once through the fleshy part on the back of her neck; once through the top of her skull, opening a wound that entered her brain; and once on either side of her head, each thrust entering her brain through the temporal lobe. The autopsy report also suggests that Ortralla fought back—there were scratches and cuts on her hands, apparently defensive wounds.

*Id.*

4. *Id.* (revealing the domineering character of Marcus McTear during his relationship with Ortralla Moseley). Ortralla’s mother, Caroline, explained that McTear controlled Ortralla by telling her what she could and could not wear, insisting her clothes were too revealing. *Id.* Caroline also recalled McTear threatening to cut his throat during an argument with Ortralla. *Id.*

them fighting with each other.<sup>5</sup> The security office sent them back to their classes and hours later a bright and talented student lost her life.<sup>6</sup>

The emerging stories of teen dating violence, like that of Ortralla Moseley's fatal relationship, defy the stereotypical perception of battered women who society has long perceived as characteristically weak, passive, and economically and emotionally dependent on their husbands.<sup>7</sup> Teenage victims of dating violence not only differ from the traditional battered woman in age, but differ also in the social context of their relationship. Moreover, unlike the traditional battered woman, teen victims and their abusers usually do not cohabitate, have children together, nor are economically dependent on each other.<sup>8</sup>

Despite these differences, teen victims are still subjected to abuse comparable in severity and prevalence to the abuse that traditional victims of domestic violence experience.<sup>9</sup> The infliction of such abuse is not limited

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5. *Id.* (describing an earlier altercation that occurred the day of Ortralla Moseley's death). Ortralla's mother was shocked to hear "from sources at the school that on the day of Ortralla's death, McTear may have told another student that he planned to stab her. Carolyn says that the same student allegedly reported McTear's plan to both a teacher and a school administrator, 'but nobody did anything.'" *Id.*

6. Jordan Smith, *A Shining Star Goes Dark*, AUSTIN CHRON., May 16, 2003, available at <http://www.austinchronicle.com/gyrobase/Issue/story?oid=OId:159800> (bemoaning the horrific consequences of the school's inaction despite its apparent knowledge of the previous altercation between Ortralla and Marcus).

7. Sue E. McClure, Note, *The Battered Woman Syndrome and the Kentucky Criminal Justice System: Abuse Excuse or Legitimate Mitigation?*, 85 KY. L.J. 169, 172 (1997) (arguing that the stereotypical battered woman is a myth). According to Lenore Walker, one of the original researchers of battered woman syndrome, a battered woman is "a woman who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without any concern for her rights.'" *Id.* at 171. Currently, battered woman syndrome has been redefined to address the variety of ways that a battered woman can respond to abuse. *Id.* Characteristics typically associated with the stereotypical battered woman include poverty, minority status, and fearfulness. *Id.* at 172. However, this myth of the battered woman is undermined by the fact that socially and educationally powerful women, such as doctors and lawyers, can be battered women too. *Id.* at 172-73. In fact, studies show that battered women come from diverse racial, ethnic, religious, and socioeconomic backgrounds. *Id.* at 173. Studies also reveal that these women vary widely in their ages and educational levels. *Id.*

8. Devon M. Largio, Note, *Refining the Meaning and Application of "Dating Relationship" Language in Domestic Violence Statutes*, 60 VAND. L. REV. 939, 951 (2007) (listing the various differences between teen victims of domestic violence and adult victims of domestic violence). A major difference between teenage victims and traditional victims is the fact that victims in marital relationships with their abusers have a legal commitment to their abuser. *Id.* at 952. However, it is unclear if this difference makes it less problematic for a teen to leave an abusive relationship. *Id.*

9. *Id.* (listing the various similarities between teen victims of domestic violence and adult victims of domestic violence). Not only is teen dating violence as severe and prevalent as traditional domestic violence, but teen victims also engage in the three-stage cycle

to boys abusing girls as teen girls are just as likely as married women to abuse their male companions.<sup>10</sup> Similar to traditional victims of domestic violence, teenagers in violent relationships can experience emotional, physical, and sexual violence that can begin with the use of derogatory words and escalate to a severe beating.<sup>11</sup> This intensification of abuse can be dangerous because batterers in a dating relationship "are more likely to use objects or criminal weapons during the abuse" than batterers in a marital relationship.<sup>12</sup> The resulting psychological damage weakens the victim's sense of independence and self-esteem, inevitably making it harder for the victim to leave the abusive relationship as the battering continues.<sup>13</sup> Teen victims are further deterred from leaving the abusive relationship for fear of experiencing more intense physical violence.<sup>14</sup>

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of domestic violence. *Id.* at 950. First, there is tension-building between the couple caused by minor violent episodes, escalating to a violent explosion, and ending with the couple reconciling in the "honeymoon" phase. *Id.*

10. *Id.* at 948 (2007) (explaining the reciprocal nature of violence in abusive teen relationships). Studies suggest that dating violence at the high school level is widely mutual as opposed to being one-sided. *Id.* Although teen boys and girls can both prove abusive, the type of abuse they inflict is distinguishable. *Id.* For example, teen boys tend to inflict sexual abuse while teen girls resort to physically abusing their partners by hitting, biting, slapping, and kicking. *Id.*

11. Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 HARV. WOMEN'S L.J. 351, 361-63 (2003) (detailing the many forms of violence that can be inflicted in a dating relationship). Aside from these three types of violence, an abuser can also assert his power and control over a victim "through destruction of pets and property." *Id.* at 363. Abusers may slash tires, rip apart photographs, hurt or kill a pet, or destroy a personal item, all in an effort to terrorize their victim. *Id.* The destruction of a victim's property acts a warning message to the victim in order to maintain control through fear. *Id.* Victims may feel that "they could be next," even though their abuser may not have actually physically abused them during these violent episodes. *Id.*; Kathryn E. Suarez, Comment, *Teenage Dating Violence: The Need for Expanded Awareness and Legislation*, 82 CAL. L. REV. 423, 430 (1994) (comparing the severity of abuse inflicted in dating violence and traditional domestic violence). "Teenage abusers, like adult abusers, use intimidation, make frightening gestures, smash objects, drive dangerously, and kidnap or harm pets to obtain compliance from the victim." Kathryn E. Suarez, Comment, *Teenage Dating Violence: The Need for Expanded Awareness and Legislation*, 82 CAL. L. REV. 423, 430 (1994).

12. Kathryn E. Suarez, Comment, *Teenage Dating Violence: The Need for Expanded Awareness and Legislation*, 82 CAL. L. REV. 423, 430 (1994) (arguing that the severity of dating violence can be even more dangerous than the violence experienced in traditional domestic violence).

13. *Id.* (discussing the effects abuse can have on a teen victim's psyche).

14. *Id.* at 431 (describing the reasons why both teenage and traditional victims refrain from leaving violent relationships). Adult and teen victims of domestic violence are exposed to the greatest risk of severe physical injury while attempting to leave their relationships. *Id.* As a result, victims often stay with their abusers in hopes of avoiding more intense abuse. *Id.* See Shari Roan, *Abused Women May Be "Hostages,"* L.A. TIMES, Aug.

While the severity of abuse teen victims experience is shocking, the prevalence of dating violence among teenagers is equally alarming. One report found that each year, one in four teens experience dating violence in the form of “verbal, physical, emotional, or sexual abuse.”<sup>15</sup> The frequency of abuse may vary depending on the type of abuse inflicted, as demonstrated by another survey finding roughly ten percent of teenage girls reported being physically beaten by their dating partner, while over twenty-one percent reported being sexually assaulted by a dating partner.<sup>16</sup> What makes these numbers even more disheartening is that once victims of dating violence transition from high school to a higher educa-

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20, 1991, available at 1991 WLNR 3860699 (commenting on health studies comparing battered women to hostage victims).

The baffling problem of why abused women often remain in harmful relationships is undergoing a radical, new appraisal by mental health experts. They now say these women exhibit a behavior that can develop in classic hostage situations.

Viewed this way, a woman’s tendency to deny the abuse or to blame herself is not necessarily a sign of hopelessness; instead, it may be a sign of her struggle to survive—a phenomenon known as the Stockholm Syndrome.

Shari Roan, *Abused Women May Be “Hostages,”* L.A. TIMES, Aug. 20, 1991, available at 1991 WLNR 3860699. According to Edna Rawlings, a psychologist for the University of Cincinnati, there are four conditions that, when existing together, foster an environment where Stockholm Syndrome may affect a victim: (1) A threat of death toward the victim followed by (2) an act of kindness (3) all done while the victim is isolated and (4) unable to escape. *Id.* These four conditions that exist in Stockholm Syndrome cases are often present in a slightly different form in cases of domestic violence. *Id.* Understanding Stockholm Syndrome may be helpful in aiding the mental health community understand why victims of domestic and dating violence stay in their relationships. *Id.*

Eventually, the victim “tries to get inside his head” to understand what makes her abuser angry and to avoid his abuse.

“She looks at the world through his eyes,” Rawlings says. “Eventually, she loses her sense of self. If release is won at this time, she will have a difficult time leaving.”

*Id.*

15. CENTERS FOR DISEASE CONTROL AND PREVENTION, UNDERSTANDING TEEN DATING VIOLENCE (2008), <http://www.cdc.gov/ncipc/pub-res/datingabusefactsheet.pdf> (providing helpful information on how to address and prevent teen dating violence). The Centers for Disease Control and Prevention warns that dating violence can lead to other unhealthy behavior, including eating disorders and depression. *Id.* Victims of dating violence are also increasingly prone to having poor social skills, problems at school, and may have a tendency to associate with violent friends. *Id.* What is even more alarming is that abused teens can maintain this unhealthy behavior into their adult lives. *Id.*

16. Paige Hall Smith, Jacquelyn W. White & Lindsay J. Holland, *A Longitudinal Perspective on Dating Violence Among Adolescent and College-Age Women*, 93 AM. J. PUB. HEALTH 1104, 1104 (2003), available at <http://ajph.aphapublications.org/cgi/reprint/93/7/1104.pdf> (reporting results of an extensive study on dating violence during adolescence and college life).

tion setting, they are at a significantly greater risk of becoming victims again in college.<sup>17</sup>

Due to the severity and prevalence of teen dating violence, teens need to be educated on how to identify, report, and escape abusive relationships. The question, then, is who is responsible for educating teens on dating violence? Parent-initiated awareness may not be a uniformly dependable approach of addressing dating violence since eighty-one percent of parents "either believe teen dating violence is not an issue or admit they don't know if it's an issue."<sup>18</sup> The justice system is also an inadequate avenue to address teen dating violence because not all teens will find protection under domestic violence statutes and not all legal services are adequately tailored to accommodate teenage victims.<sup>19</sup> The education system, then, has the most potential for being an effective weapon

17. *Id.* (revealing that women who experienced violence during adolescence are at the greatest risk of re-victimization in college). Women who experience any type of violence during childhood are the next group of women at risk. *Id.*

18. A.B.A., *TEEN DATING VIOLENCE FACTS* (2006), <http://www.abanet.org/unmet/teendating/facts.pdf> (providing various statistics on dating violence). Approximately fifty-four percent of parents admit that they have not taught their children about the dangers of teen dating violence. *Id.*; Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 HARV. WOMEN'S L.J. 351, 359 (2003) (discussing how many adults are ignorant of the existence of teen dating violence). "At least three research studies have indicated that parents themselves may contribute to the problem of teen dating violence by denying or minimizing the problem." Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 HARV. WOMEN'S L.J. 351, 359 (2003). One factor that may contribute to parental denial of violence is the lack of recognition that teens, like adults, place serious emotional stock in their relationships. *Id.* Some parents simply may not understand that bonding has occurred between the teens, and they may therefore minimize the seriousness of the relationship. *Id.*; see also Robin Abcarian, *Jenny's Story: Parents Were the Last to Know*, L.A. TIMES, Oct. 13, 1991, available at 1991 WLNR 3908927 (discussing how the parents of a teenage girl killed by her boyfriend were unaware of the severity of the abuse). Jenny Crompton was fifteen years old when she was murdered by her boyfriend, Mark Smith. Robin Abcarian, *Jenny's Story: Parents Were the Last to Know*, L.A. TIMES, Oct. 13, 1991, available at 1991 WLNR 3908927. Even though Jenny had tried on different occasions to break up with Mark, he refused to let her and instead spied on her, threatened her life, and physically abused her. *Id.* Then, "[o]n Sept[ember] 26, 1986, Smith stabbed Jenny [sixty] times with a butcher knife in her living room" and killed her. *Id.*

19. See Devon M. Lario, Note, *Refining the Meaning and Application of "Dating Relationship" Language in Domestic Violence Statutes*, 60 VAND. L. REV. 939, 954 (2003) (providing an extensive overview on how the language of many state domestic violence statutes limits the protection afforded to teen victims). Currently all state domestic violence statutes provide that a victim must initially establish a relationship between themselves and their abuser. *Id.* Domestic violence protection orders are under-used since not all types of violence, and not all victims are covered. *Id.* Despite the fact that "many states have expanded the relationship requirement, many states still do not include victims in dating relationships, cohabitation relationships, and same-sex relationships, among others." *Id.*

against dating violence because schools have a duty to protect their students and can effectively use their authority to protect victims and punish abusers.<sup>20</sup> Moreover, schools have “a unique opportunity to affect a teen abuser’s behavior to a greater degree than actors in most other settings” because they can educate and influence teens at a vital stage in their emotional and social development.<sup>21</sup>

Unfortunately, a majority of teens remain skeptical that school officials will be able to support them during these dangerous times, which is why teens are less likely to tell their school administrators about their involvement in dating violence, as opposed to any other person in that teen’s life.<sup>22</sup> The reluctance of teen victims to seek help from school officials signals the educational system’s failure to inform its students of its commitment to ensure the physical safety and emotional wellbeing of every

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20. See Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 HARV. WOMEN’S L.J. 351, 352–53 (2003) (arguing why schools are the most appropriate institution for addressing teen dating violence). Schools have a responsibility to protect their students since students are required to go to school every day which can inevitably force contact between an abuser and victim. *Id.* at 352. Moreover, schools have the ability to help students unlearn bad behavior during a critical developmental time in their lives. *Id.* at 353. Also, “schools and school districts are liable for sexual harassment[, one form of dating violence,] that occurs on school campuses if the harassment is known to a school authority figure who has the power to stop the harassment but ignores the problem or does not address it sufficiently.” *Id.*

21. *Id.* at 353 (proposing that schools have the greatest chance of changing the prevalence of teen dating violence). The teenage years are critical for emotional and social development. *Id.* The attitudes toward and behaviors in relationships that are learned throughout these years often become a teen’s lifelong patterns. *Id.*

22. Tiffany J. Zwicker, Note, *Education Policy Brief: The Imperative of Developing Teen Dating Violence Prevention and Intervention Programs in Secondary Schools*, 12 S. CAL. REV. L. & WOMEN’S STUD. 131, 136 (explaining a teen victim’s reluctance to seek help from adults, including school personnel). “The Teen Dating Violence and Social Environment Survey: Teen Opinion” statistics revealed that:

[w]hen asked, “If you were dating someone who was trying to control you, insult you, or physically hit you, which of the following do you think you would talk to [sic] about it, if any?” Fifty-eight percent of females said they would talk to a parent, 3% said they would talk to a school administrator, 7% said they would talk to the police and 86% said they would tell a friend who is about their own age.

*Id.* at 135–36; see also Devon M. Largio, Note, *Refining the Meaning and Application of “Dating Relationship” Language in Domestic Violence Statutes*, 60 VAND. L. REV. 947, 953 (2007) (explaining that sixty-one percent of dating violence victims seek help from a friend first, rather than a professional). Teens tend to confide in their friends before seeking the help of a parent or other authority figure because they are afraid that their parents will strip them of their independence or misperceive their culpability. Devon M. Largio, Note, *Refining the Meaning and Application of “Dating Relationship” Language in Domestic Violence Statutes*, 60 VAND. L. REV. 947, 953 (2007).

student.<sup>23</sup> It is imperative that schools across the country take an assertive stance on combating teen dating violence and inform students that their school is ready to assist them in leaving an abusive relationship.

Texas has taken a pioneering step by creating § 37.0831 of the Texas Education Code (the Teen Dating Violence statute) requiring Texas school districts to implement a dating violence policy in their schools. However, as this Comment will show, the current language of the Texas statute is unassertive and fails to provide school districts with sufficient direction for constructing and implementing an effective dating violence policy. Part II of this Comment outlines the various legal remedies teens in Texas have to protect themselves from dating violence, explains why these legal remedies are insufficient, and argues why the Texas Education Code has the potential to be a more adequate remedy. Part III explores the requirements set forth in the Teen Dating Violence statute, explains the importance of school districts satisfying each requirement, and recommends specific statutory revisions to provide school districts with more direction in satisfying the requirement. I conclude by providing a suggested amended version of the Teen Dating Violence statute designed to guide the Texas legislature and other State governments in creating a statute that is more explanatory and, thus, a more effective weapon against teen dating violence.

## II. LEGAL REMEDIES FOR VICTIMS OF TEEN DATING VIOLENCE UNDER TEXAS LAW

### A. *Relief Under Texas Civil and Criminal Law*

Currently, Texas law affords victims of teen dating violence criminal and civil legal remedies to punish their abusers and protect themselves. Under the criminal statutes of the Texas Penal Code, offenders of dating violence who have engaged in or threatened physical violence against their partner can be charged with assault.<sup>24</sup> The offender can be charged with the more serious offense of aggravated assault if the physical vio-

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23. Tiffany J. Zwicker, Note, *Education Policy Brief: The Imperative of Developing Teen Dating Violence Prevention and Intervention Programs in Secondary Schools*, 12 S. CAL. REV. L. & WOMEN'S STUD. 131, 136 (2002) (indicating that "law enforcement and schools have failed to convince teens that they are supportive and/or effective.").

24. TEX. PENAL CODE ANN. § 22.01(a) (West Supp. 2009) (providing a legal definition for "assault"). Under this section of the Texas Penal Code, a person commits assault:

[I]f the person: (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse; (2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

*Id.* Assault is punishable by a fine and up to one year in jail. *Id.* § 12.21, § 22.01(b).



lence led to serious bodily injury or if a deadly weapon was used or exhibited.<sup>25</sup> If the offender has committed sexual violence against his partner, he may be charged with sexual assault or aggravated sexual assault.<sup>26</sup>

Although teen victims may find relief in knowing their abusers are behind bars, there are others who criticize the criminalization of teen abusers, arguing that criminalization against this group of young offenders is ineffective and detrimental.<sup>27</sup> A juvenile court judge has discretion in sentencing minors, with probation being the most applied legal remedy.<sup>28</sup> Probation may seem favorable to a judge because it is cost effective while ensuring that an offender can still attend school and not get behind on his or her studies.<sup>29</sup> Yet, probation also has the effect of maintaining contact between victims and batterers who go to the same school.<sup>30</sup> Continued contact between a batterer and victim can prove to be dangerous because abusers may retaliate against their partner with more violent behavior after being subjected to criminal sanctions.

Besides gaining relief under the Texas Penal Code, teen victims may be able to obtain civil relief under the Texas Family Code's family violence

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25. *Id.* § 22.02(a) (defining "aggravated assault"). Under this section, a person commits aggravated assault "if the person commits assault as defined in § 22.01 and the person: (1) causes serious bodily injury to another, including the person's spouse; or (2) uses or exhibits a deadly weapon during the commission of the assault." *Id.*

26. *Id.* § 22.011(a) (identifying the elements of "sexual assault"); *Id.* § 22.021(a) (defining the offense of "aggravated sexual assault"). Both aggravated assault and sexual assault can be categorized as either first or second-degree felonies, which are punishable by fines and no less than five or two years of jail time respectively. *Id.* §§ 12.33, 22.02(b), 22.011(a).

27. Tiffany J. Zwicker, Note, *Education Policy Brief: The Imperative of Developing Teen Dating Violence Prevention and Intervention Programs in Secondary Schools*, 12 S. CAL. REV. L. & WOMEN'S STUD. 131, 141-42 (2002) (advocating against the criminalization of violent teen offenders). The detrimental effects of criminalization include producing more violent offenders by exposing teen abusers to other criminals who can influence them with their violent tendencies. *Id.* at 141. Criminalization also negatively affects the social well-being of teen abusers by displacing them from support systems, such as family, and thus severing their connections with the community. *Id.*

28. TEXAS JUVENILE PROBATION COMMISSION, WHEN A CHILD BREAKS THE LAW IN TEXAS (2010), [http://www.tjpc.state.tx.us/FAQ/child\\_breaks\\_law.htm](http://www.tjpc.state.tx.us/FAQ/child_breaks_law.htm) (providing an overview of the treatment of minors in the Texas criminal justice system). If a judge chooses to place the child on probation, the child must still attend school, demonstrate good conduct, obey set curfews, and participate in required programs, such as community service. *Id.* A probation officer will be appointed to enforce the terms of probation. *Id.*

29. *Id.* (explaining why probation is the preferred option for punishing juvenile offenders).

30. Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 HARV. WOMEN'S L.J. 351, 352 (2003) (recognizing that "schools force contact between a batterer and a victim in a way that most other environments do not.").

statutes. In recognition of the changing face of domestic violence, the Texas Family Code expanded the definition of domestic violence by adding the Teen Dating Violence statute in 2001.<sup>31</sup> The statute defines dating violence as “an act by an individual that is against another individual with whom that person has or has had a dating relationship and that is intended to result in physical harm, bodily injury, assault, or sexual assault” as well as imminent threat of such violence.<sup>32</sup> The Texas statute uses a factor approach in determining whether individuals are in a dating relationship.<sup>33</sup> The factors a court must consider in making this determination are the duration and nature of the relationship and “the frequency and type of interaction between the persons involved in the relationship.”<sup>34</sup> If victims can demonstrate that dating violence was committed against them, they will be entitled to a protective order that is effective for up to two years and which can prohibit the abuser from communicat-

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31. TEX. FAM. CODE ANN. § 71.0021(a) (West 2008) (providing that acts of dating violence constitute a form of family violence).

32. *Id.* (providing a definition for dating violence with a list of factors the court shall consider in making a determination that the acts constitute dating violence).

33. *Id.* (detailing the factors a court must consider in determining the existence of a “dating relationship”); cf. Devon M. Largio, Note, *Refining the Meaning and Application of “Dating Relationship” Language in Domestic Violence Statutes*, 60 VAND. L. REV. 939, 967 (2007) (arguing that the factor approach is better than the descriptive approach because it allows for a larger area of dating violence to qualify for protective orders). The term, “dating relationship” is used frequently in domestic violence statutes. Devon M. Largio, Note, *Refining the Meaning and Application of “Dating Relationship” Language in Domestic Violence Statutes*, 60 VAND. L. REV. at 961 (2007). Unfortunately, it is difficult to ascertain the meaning of this language since each state employs a different method of defining this term. *Id.* Generally, statutes define “dating relationship” using either a descriptive approach or a factor-based approach. *Id.* The descriptive approach “define[s] either what a dating relationship is or what it is not, and some [statutes] provide both a description and limiting language, offering images of what a dating relationship should and should not look like. If one element under this descriptive approach is missing, then there is no coverage.” *Id.* Alternatively, under the factor approach, the statute lists factors that the court must take into account when applying the statute to an individual case. *Id.* Under this approach, the presence of certain elements the court considers can compensate for the absence of another element. *Id.* Some of the factors that the court considers under these statutes are “the nature of the relationship; the length of time that the relationship has existed; and the frequency (and sometimes type) of interaction between the individuals in the relationship.” *Id.* at 965. Also, some statutes call upon the court to consider how much time has passed since the relationship ended, when it is appropriate. *Id.*

34. TEX. FAM. CODE ANN. § 71.0021(b) (West 2008) (listing factors the court can consider in making a determination if an act constitutes dating violence). Additionally, “[a] casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a dating relationship.” *Id.* § 71.0021(c).

ing with the victim and require the abuser to attend counseling.<sup>35</sup> Protective orders also “give victims a sense of control.”<sup>36</sup>

While Texas is on the right track for including the dating violence statute in its Family Code and allowing dating violence victims access to protective orders against their abusers, there are some administrative inadequacies in the application of the statute to teen dating violence. First, teen victims have the obstacle of establishing that they are in a serious enough relationship as to qualify under the dating relationship requirement of the statute.<sup>37</sup> Judges may be biased in labeling teen relationships as dating relationships, or teens may be too afraid to admit in court of their romantic activities or sexual involvement with their abuser.<sup>38</sup> Second, teen victims in Texas cannot petition for a protective order alone because of their minority status and must have an adult petition for them.<sup>39</sup> This obstacle may be heightened by the fact that teens may have difficulty in finding an adult who will petition on their behalf

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35. *Id.* § 85.001 (listing the required findings and orders that a court will issue for a “hearing on an application for a protective order”). A court can issue a protective order only if it finds that family violence has occurred and will likely happen again in the future. *Id.* § 85.001(a). Protective orders are effective “for the period stated in the order, not to exceed two years” or, if a time limit is not specified in the order, “until the second anniversary of the date the order was issued.” *Id.* § 85.025(a). A court may order the offender to attend “a battering intervention and prevention program” or attend counseling with someone “who has completed family violence intervention training” approved by the Texas Department of Criminal Justice. *Id.* § 85.022(a).

36. Devon M. Largio, Note, *Refining the Meaning and Application of “Dating Relationship” Language in Domestic Violence Statutes*, 60 VAND. L. REV. 939, 955 (2007) (arguing that protective orders are the best legal remedy for victims of teen dating violence). Additionally, the issuance of a protective order may prevent and diffuse the violence to which the victim is being subjected. *Id.*

37. TEX. FAM. CODE ANN. § 71.0021(b) (West 2008) (listing the factors Texas courts shall consider to determine whether a “dating relationship” exists).

38. See Devon M. Largio, Note, *Refining the Meaning and Application of “Dating Relationship” Language in Domestic Violence Statutes*, 60 VAND. L. REV. 939, 972 (2007) (discussing the biases within the legal system that affect a teen’s chance of gaining a protective order against their batterer). The shortcomings of both the descriptive and factor-based approach to defining “dating relationship” can drastically reduce the ability of a victim to obtain a protective order. *Id.* Under many states that use the descriptive approach, victims will not be eligible for a protective order unless they can establish that they were involved in a serious relationship and that they expected either affection or sexual intercourse. *Id.* at 962. While the factor approach remedies this problem by allowing teens to emphasize the most important facets of their relationships, instead of having to disclose potentially embarrassing details of their abusive relationship in order to receive protection, it can still be restrictive for teens. *Id.* at 972. The downfall of the factor based approach is that the courts have the discretion to “weigh [the] statutory factors as they see fit and to limit those factors to the specific wording in the statute.” *Id.*

39. TEX. FAM. CODE ANN. § 82.002 (West 2008) (listing the requirements to obtain a protective order).

because they are ashamed of the abusive nature of their relationship<sup>40</sup> or are afraid to admit that they are in a relationship. Therefore, although Texas' dating violence statute does not explicitly include or exclude minors' access to protective orders, "teens may in practice be excluded from domestic violence statutes, robbing them of the protection they need and deserve."<sup>41</sup>

Teen victims should use these criminal and civil avenues when involved in an abusive relationship if they are able to gain access to such remedies. However, teen victims are unlikely to seek help even if they realize that the abuse they are subjected to is legally punishable and may feel violated again if they seek such legal remedies but are denied protection due to legal technicalities.<sup>42</sup> While teen batterers may understand that they are being punished because they have done something wrong, these types of remedies do not teach them why dating violence is wrong and what kind of behavior is acceptable or unacceptable in a healthy relationship. Prevention programs are really how teen dating violence should be addressed. Prevention is essential because early education and intervention

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40. Kathryn E. Suarez, Comment, *Teenage Dating Violence: The Need for Expanded Awareness and Legislation*, 82 CAL. L. REV. 423, 454 (1994) (finding that teens who have detached themselves from family and friends during the course of their abusive relationship may be hesitant to seek help in filing for a protective order). Suarez argues that states utilizing guardian ad litem appointment provisions ought to expand their domestic violence definitions. *Id.*

[According to Suarez, Alaska employs a model statute,] which has both an inclusive domestic violence definition and an appointment provision: 'The court may appoint a guardian ad litem or attorney to represent a minor who is subject to this chapter . . .'. The combination of a domestic violence definition that includes dating relationships with the possibility of guardian ad litem appointment means that an abused teen will be able to avail herself of legal protection with fewer obstacles.

*Id.* at 455 (footnotes omitted).

41. Devon M. Largio, Note, *Refining the Meaning and Application of "Dating Relationship" Language in Domestic Violence Statutes*, 60 VAND. L. REV. 939, 972 (2007) (advocating for more inclusive dating violence statutes that would explicitly include minors as potential victims that can gain relief). If minors are excluded from coverage under domestic violence statutes, they will not be able to take advantage of the legal developments that are aimed at helping victims and reducing violence against them. *Id.* Furthermore, excluding teens from coverage under domestic violence statutes would deny important protections to an age group that arguably is in the greatest need for these protections. *Id.*

42. Kathryn E. Suarez, Comment, *Teenage Dating Violence: The Need for Expanded Awareness and Legislation*, 82 Cal. L. Rev. 423, 429 (1994) (estimating that "only one in every twenty-five teenagers involved in an abusive relationship will seek help"). Victims of dating violence may refuse to seek help due to embarrassment, lack of knowledge regarding legal options, remedies, and community programs. *Id.* Furthermore, some teens fear that adults may discredit their claims of abuse because of their age. *Id.*

about dating violence not only prevents dating violence from starting but can also keep it from continuing.<sup>43</sup>

### B. *Relief Under the Texas Education Code*

In response to the need to establish preventive measures against teen dating violence, Texas took a progressive step to become the first state to enact a statute that directly addresses dating violence in secondary schools in its education code.<sup>44</sup> State Representative Dawnna Dukes first introduced House Bill 121 as a means to combat dating violence in Texas schools, which Governor Rick Perry signed into legislation on May 18, 2007.<sup>45</sup> After hearing committee testimony by both educators and students, it became apparent to the Texas legislature that neither group knew how to respond to situations of dating violence.<sup>46</sup>

In May 2007, 121 Texas representatives voted in favor of the Teen Dating Violence statute,<sup>47</sup> demonstrating the overwhelming support of the Texas legislature in combating dating violence in Texas schools. The legislative intent behind the Teen Dating Violence statute is not only to protect victims of teen dating violence, but to also express that dating violence will not be condoned.<sup>48</sup> The Texas legislature also sought to promote healthy relationships while ensuring that teens will continue to have the opportunity to learn in a safe and secure environment.<sup>49</sup> As a result, State Representative Dawnna Dukes now believes that “young victims are less likely to be re-victimized in current and future relationships.”<sup>50</sup>

The passage of the Teen Dating Violence statute creates another remedy that victims of teen dating violence in Texas can use to protect themselves by mandating schools to aid them.<sup>51</sup> The statute also provides a

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43. Cheryl Hanna, *Sex Before Violence: Girls, Dating Violence, and (Perceived) Sexual Autonomy*, 33 FORDHAM URB. L.J. 437, 456 (2006) (advocating for more prevention education in stopping or reducing teen dating violence). Many programs teach teens what a healthy romantic relationship should look and feel like, and make sure that teens know that they do not have to consent to unwanted sexual activity. *Id.* at 457.

44. *Governor Signs Dukes Teen Dating Violence Legislation*, Texas House of Representatives News Release (May 18, 2007), available at <http://www.house.state.tx.us/news/release.php?id=2142> (reporting on the passage of the Teen Dating Violence statute).

45. *Id.*

46. *Id.*

47. *State Rep. Dukes Passes Teen Dating Violence Legislation with 122 Yeas*, U.S. ST. NEWS, Mar. 14, 2007, available at 2007 WLNR 18670077 (announcing the passing of House Bill 121 by the Texas legislature).

48. *Id.*

49. *Id.*

50. *Id.* (quoting Representative Dukes).

51. TEX. EDUC. CODE ANN. § 37.0831(b)(2) (West Supp. 2009) (mandating that schools address enforcement of protective orders).

means for educating students on how to detect and prevent unhealthy relationships. The Teen Dating Violence statute reads:

Each school district shall adopt and implement a dating violence policy to be included in the district improvement plan under Section 11.252.

(b) A dating violence policy must:

- (1) include a definition of dating violence that includes the intentional use of physical, sexual, verbal, or emotional abuse by a person to harm, threaten, intimidate, or control another person in a dating relationship, as defined by Section 71.0021, Family Code; and
- (2) address safety planning, enforcement of protective orders, school-based alternatives to protective orders, training for teachers and administrators, counseling for affected students, and awareness education for students and parents.<sup>52</sup>

Rhode Island followed Texas' initiative and has also enacted a similar dating violence statute in its education code.<sup>53</sup> Rhode Island's teen dating violence statute was enacted in response to the death of a college student who was murdered by her boyfriend and is referred to as the "Lindsey Ann Burke Act" in her memory.<sup>54</sup> In comparison to the Texas statute, the Rhode Island statute has more assertive language than the language used in the Texas statute.<sup>55</sup> Instead of merely requiring schools to implement policies to address teen dating violence like the Texas statute does,<sup>56</sup> the Rhode Island statute requires Rhode Island's department of education to create a model dating violence policy to help school dis-

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52. *Id.* (listing the actions required of school districts in implementing a dating violence policy).

53. See R.I. GEN. LAWS § 16-21-30(c) (Supp. 2009) (requiring each district to develop a dating violence policy). The statute also outlines the requirement for school districts to educate their students on the dangers of dating violence. *Id.* § 16-22-24.

54. Press Release, R.I. Gen. Assembly, Assembly Approves 'Lindsay Ann Burke Act' (June 22, 2007), available at <http://www.rilin.state.ri.us/News/pr1.asp?prid=4335> (reporting that "'the Lindsay Ann Burke Act' [was created in] an effort to protect those most vulnerable to dating violence by calling on schools to provide dating violence education for middle and high school students").

55. Compare R.I. GEN. LAWS § 16-21-30(c) (Supp. 2009) (providing definitions, specific requirements, and a general model for schools to follow in creating dating violence policies) with TEX. EDUC. CODE ANN. § 37.0831 (West Supp. 2009) (requiring that a dating violence policy be created and implemented without specific guidelines or examples to follow).

56. TEX. EDUC. CODE ANN. § 37.0831(a) (West Supp. 2009) (requiring Texas schools to "adopt and implement a dating violence policy").

tricts implement their policies.<sup>57</sup> Furthermore, the Rhode Island statute also requires schools to include curriculum on dating violence in health classes from seventh to twelfth grade.<sup>58</sup>

The Texas Education Code can be utilized as a more adequate method of combating teen dating violence than other criminal and civil remedies because it can fill the deficiencies found in the Texas Penal Code and Texas Family Code by providing an equal blanket of protection and punishment for all teens involved in dating violence. Although Texas has taken an appropriate step in combating teen dating violence by incorporating the Teen Dating Violence statute into its Education Code, school districts are still unsure about the best way to create and implement a dating violence policy pursuant to the Teen Dating Violence statute.<sup>59</sup> Compared to the Rhode Island statute, the language of the Teen Dating Violence statute is insufficient, thus limiting the effectiveness the statute could have in fighting dating violence. For this reason, the Texas legislature needs to strengthen the language of the Teen Dating Violence statute in order to produce more effective results from Texas school districts.

### III. IMPROVING THE TEXAS EDUCATION CODE'S APPROACH

The Texas Education Code's Teen Dating Violence statute is a fairly new law, but has the potential to have a tremendous impact on students' lives. Unfortunately, since its enactment in 2007, some school districts have not adequately satisfied all the requirements set forth in the statute.

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57. R.I. GEN. LAWS § 16-21-30(b) (Supp. 2009) (listing the minimum requirements for the model dating violence policy). School policies following the Department of Education's model should also address the various incidents of dating violence that have affected the students of each school district. *Id.* § 16-21-30(c)(1). The policy should assert that the school district will not tolerate dating violence, and should list the proper procedures and guidelines for responding to incidents of dating violence that take place at school and set forth proper disciplinary procedures. *Id.* Finally, this model policy is to be published in the school district's handbook, so that students and parents are aware of this policy. *Id.* §§ 16-21-30(c)(2), (e).

58. *Id.* § 16-22-24(a) (Supp. 2009) (providing the minimum requirements for dating violence education for students in seventh through twelfth grades). "Dating violence education shall include, but not be limited to, defining dating violence, recognizing dating violence warning signs and characteristics of healthy relationships. Additionally, students shall be provided with the school district's dating violence policy as provided in subsection 16-21-30(c)." *Id.*

59. Matthew Haag, *Texas School Districts Trying to Combat Teen Dating Violence: Texas Schools Take Different Paths to Shape Healthy Relationships*, DALLAS MORNING NEWS, Mar. 4, 2008, available at 2008 WLNR 4259644 (reporting the uncertainty school districts across Texas face regarding the effectiveness of their different dating violence programs). One way to address teen dating violence is through group help sessions, where students help each other learn how to have healthy, non-abusive relationships, and how to spot the signs of teen dating violence and abusive relationships. *Id.*

The first requirement of the Teen Dating Violence statute is that Texas school districts must provide a definition of teen dating violence in their school policies.<sup>60</sup> Many Texas school districts have satisfied this straightforward requirement by putting a definition of dating violence in their Student/Parent Handbooks, Student Code of Conduct, or in other district distributions. Keeping in tune with the Texas Family Code's definition of dating violence, some school districts have defined dating violence as occurring when "a person in a current or past dating relationship uses physical, sexual, verbal, or emotional abuse to harm, threaten, intimidate, or control the other person."<sup>61</sup> However, as the discussion below will demonstrate, many schools districts have failed to address or have insufficiently addressed the other requirements set forth in the Teen Dating Violence statute, which are vital in preventing dating violence from occurring amongst the teen population.

#### A. *The Requirement of Training Teachers and Administration*

In Texas, teachers and school administrators are required to participate in staff development activities that provide training on various school-related matters, such as effective teaching methods and use of classroom technology.<sup>62</sup> Training school personnel on teen dating violence is necessary to adequately prepare school personnel on handling, addressing, and recognizing incidents of dating violence and is required under the Teen Dating Violence statute.<sup>63</sup> However, the Teen Dating Violence statute only states that training must be provided for school personnel, but does

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60. TEX. EDUC. CODE ANN. § 37.0831(b)(1) (West Supp. 2009) (delineating the requirements of dating violence policies).

61. DALLAS INDEPENDENT SCHOOL DISTRICT, CODE OF CONDUCT AND STUDENT HANDBOOK 39 (2009), available at [http://www.dallasisd.org/parents/handbooks/student\\_handbook.pdf](http://www.dallasisd.org/parents/handbooks/student_handbook.pdf) (providing a definition for dating violence and other types of violence that can ensue on campus); see also AUSTIN INDEPENDENT SCHOOL DISTRICT, 2009–2010 STUDENT CODE OF CONDUCT 54 (2009), available at [http://www.austinisd.org/academics/docs/Student\\_Conduct\\_Code\\_09\\_10\\_En.pdf](http://www.austinisd.org/academics/docs/Student_Conduct_Code_09_10_En.pdf) (defining dating violence and providing extensive procedures for addressing incidents of dating violence). Austin Independent School District "has a policy to prevent and intervene in situations regarding bullying and dating violence." AUSTIN INDEPENDENT SCHOOL DISTRICT, 2009–2010 STUDENT CODE OF CONDUCT 54 (2009). The school district defines dating violence as "the intentional use of physical, sexual, verbal, or emotional abuse by a person to harm, threaten, intimidate, or control another person in a dating relationship." *Id.*

62. TEX. EDUC. CODE ANN. § 21.451(d) (West Supp. 2009) (providing the staff developmental requirements educators and other school staff have to satisfy during the course of their employment).

63. *Id.* § 37.0831(b)(2) (mandating the training of teachers and school administrators). Training under the statute should be extended to all school personnel, such as counselors and nurses, who may have more knowledge than teachers and administrators about students involved in abusive relationships. *Id.*



not provide specific guidelines for conducting that training. As the discussion below will demonstrate, the Teen Dating Violence statute would be more effective by stating that training must include information that educates school personnel in identifying and responding to incidents of dating violence. The statute should also require school districts to implement an intervention protocol designed specifically for dating violence situations. Such language will better inform school districts about their obligations, which will thereby strengthen a school district's preparation in addressing dating violence in its schools.

i. Training Should Educate School Personnel on Identifying and Responding

School personnel must be trained to address dating violence because they may not recognize when dating violence occurs or know how to respond when an incident of dating violence takes place. School personnel will not be able to help victims if they do not understand the dynamics and special circumstances involved in teen dating violence.<sup>64</sup> For school personnel to be an effective force against dating violence there are at least three issues that should be covered in training.

First, training should correct any misconceptions that school personnel may have about teen dating violence. Both teachers and administrators may have mistaken ideas about violence between teens, characterizing teen relationships as "puppy love" and some believing that teens cannot inflict or experience the abuse that has plagued many adult relationships.<sup>65</sup> Even if teachers or administrators recognize that a student is in a

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64. Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 HARV. WOMEN'S L.J. 351, 388 (2003) (advocating for the training of school staff and faculty in recognizing, preventing, and stopping teen dating violence). It is in the school's best interests to train its faculty and staff in this capacity to reduce the school's legal liability in situations where its faculty failed to act appropriately. *Id.* In addition to developing an understanding of the signs of teen dating violence, school faculty and staff should be made aware of outside community resources that can help teens escape abusive relationships. *Id.*

65. Susan L. Pollet, *Teen Dating Violence is Not 'Puppy Love,'* 32 WESTCHESTER B.J. 29, 29 (2005) (arguing that adults tend to "romanticize" teen relationships). Parents are another group of adults that may deny their teenager is in danger of becoming a victim or abuser. *Id.*; Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 HARV. WOMEN'S L.J. 351, 388 (2003) (explaining why school personnel may not respond seriously to incidents of dating violence between their students).

Many teachers and administrators make the common mistake of minimizing the behavior or telling the complaining student that she should not be so sensitive. Other teachers ignore the behavior completely, which, in at least one case, led to the teacher being sued personally by a victim of an in-class assault.

violent relationship, they may justify their inaction by reasoning that teens can easily leave an abusive relationship.<sup>66</sup> This reasoning ignores the fact that students are required by law to attend school, making “teens . . . potentially less able than other groups to escape their abusers if the teens and the abusers attend the same high schools.”<sup>67</sup>

Second, training should guide school personnel in identifying the different forms of abusive behavior. Dating violence is more than just abuse that can manifest itself physically, since verbal and emotional abuse can be just as damaging as physical abuse.<sup>68</sup> Violence between intimate persons is not about the physical abuse that can ensue, but is more about the control that one partner exerts over the other.<sup>69</sup> Training guides should provide comprehensive definitions of the different types of abuse and in-

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Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 HARV. WOMEN'S L.J. 351, 388 (2003). It is important for school faculty and staff members to understand the difficulty in a teen's ability to voice their concerns to an authority figure. *Id.* Therefore, school faculty and staff should make an effort to ensure that the teen feels supported in her decision to confide in an adult and seek help to end an abusive relationship. *Id.*

66. See Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 HARV. WOMEN'S L.J. 351, 388 (2003) (explaining that misconceptions surrounding dating violence also include the false idea that teens can easily leave an abusive relationship). Because teens face many of the same obstacles that adults do when trying to leave an abusive relationship, they are also at risk of experiencing an escalation of violent behavior. *Id.*

67. *Id.* (explaining how mandatory school attendance laws can negatively affect teen dating violence victims).

68. See Devon M. Largio, Note, *Refining the Meaning and Application of “Dating Relationship” Language in Domestic Violence Statutes*, 60 VAND. L. REV. 939, 950 (2007) (discussing the different forms of dating violence). “[E]motional abuse is the ‘most hidden, yet often the most detrimental, form of abuse’ and includes insults, intimidation, and humiliation in the form of yelling, name-calling, isolation, and surveillance, among others.” *Id.*; accord Prentice L. White, *Stopping the Chronic Batterer Through Legislation: Will it Work This Time?*, 31 PEPP. L. REV. 709, 717 (2004) (commenting on the different forms of abuse). White argues that advocates must accept that domestic violence can be “both emotional and physical at the same time” and that a person “without bruises can still be a victim [of domestic violence].” Prentice L. White, *Stopping the Chronic Batterer Through Legislation: Will it Work This Time?*, 31 PEPP. L. REV. 709, 717 (2004).

69. Prentice L. White, *Stopping the Chronic Batterer Through Legislation: Will it Work This Time?*, 31 PEPP. L. REV. 709, 717 (2004) (explaining that violence is generally the unintended by-product of the assailant's pursuit for control, despite popular belief to the contrary). There is a long history of males channeling violence towards their partners in the form of “mental torture.” *Id.* It is hard for a person who has not experienced this type of violence to comprehend such a feeling. *Id.*; see Carole A. Sousa, *Teen Dating Violence: The Hidden Epidemic*, 37 FAM. & CONCILIATION CTS. REV. 356, 361–62 (1999) (explaining the characteristics of teen abuse). “The aggressor may be using violence to control the other person's behavior. If adults fail to search for this dynamic, their intervention will send the message that both parties are to blame. This supports the perpetrator's sense of entitlement in using violence and reinforces the victim's feelings of helplessness.” Carole

clude a list of warning signs that will help school personnel in identifying when one of their students is trying to control their partner through abuse.

Third, school personnel also should be trained on how to respond when they witness dating violence or when a student comes to them for help so that they can effectively handle the situation. School personnel must respond to claims of dating violence in a way that communicates to students that they are taking the students' claims seriously and are ready to help.<sup>70</sup> The training should aid school personnel in understanding the complexities of dating violence in order to avoid making victims feel isolated or at fault.<sup>71</sup> Such a misstep in approaching victims of dating violence could cause victims "who reach out for assistance to develop a 'culture of resistance' to any institution that does not respect their unique circumstances."<sup>72</sup> If teachers or administrators feel that they cannot handle the situation, they should be made aware that they can always refer the student to another school official, such as a counselor, who may possess more knowledge or resources in helping the victim.<sup>73</sup>

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A. Sousa, *Teen Dating Violence: The Hidden Epidemic*, 37 FAM. & CONCILIATION CTS. REV. 356, 361–62 (1999).

70. Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 HARV. WOMEN'S L.J. 351, 388 (2003) (explaining how school personnel should respond to dating violence). "Faculty and staff should continuously encourage open lines of communication with students regarding interpersonal problems between students." *Id.*

71. Prentice L. White, *Stopping the Chronic Batterer Through Legislation: Will it Work This Time?*, 31 PEPP. L. REV. 709, 717 (2004) (arguing that it is important for anyone helping a battered woman to be taught the complexities of domestic violence); see Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 HARV. WOMEN'S L.J. 351, 388 (2003) (explaining why it is important for school personnel to understand dating violence in order to respond to incidences of dating violence).

Teachers and other school officials should be aware that for a teen to voice her concerns to an adult is an important and difficult step, and that she should be supported in her decision to come forward and ask for help in a situation she may not think feels right.

Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 HARV. WOMEN'S L.J. 351, 388 (2003).

72. Prentice L. White, *Stopping the Chronic Batterer Through Legislation: Will it Work This Time?*, 31 PEPP. L. REV. 709, 718 (2004) (explaining that an insensitive approach to helping a battered woman could have serious consequences). In order to prevent victims from resisting help, advocates need to make victims feel empowered. *Id.*

73. See Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 HARV. WOMEN'S L.J. 351, 388 (2003) (explaining why some school personnel may feel ill-equipped to deal with teen dating violence). School officials may lack the confidence to handle an incidence of dating violence either because they feel they do not have enough information to effectively help or are uncomfortable in

Training also provides an opportunity for a school to explain its intervention protocol for responding to incidents of dating violence to its staff. Currently, Texas school districts have implemented varying intervention protocols. For example, the Dallas Independent School District has provided its staff with detailed procedures for documenting, reporting, and investigating dating violence in its Student Handbook, thus ensuring that both teachers and students are aware of the measures that need to be taken when an incident occurs.<sup>74</sup> In contrast, the North East Independent School District, San Antonio's largest school district, does not specifically provide such helpful information in their Student Handbook.<sup>75</sup> If school districts have not already implemented an intervention protocol, they need to develop and implement a protocol as soon as possible because an intervention protocol will ensure that both victim and offender are treated fairly and in a consistent manner.<sup>76</sup>

## ii. Training Prepares School Personnel in Fulfilling Their Duty to Protect

Extending an educator's responsibilities to include training on teen dating violence is important because teachers have a duty to protect their students.<sup>77</sup> School districts must realize that their failure to adequately train school personnel, which limits a teacher or administrator's ability to fulfill their duty, can result in the school district being held liable for fail-

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getting involved. *Id.* In either case, however, the school official must still refer the student so that student is still provided with needed help. *Id.*

74. DALLAS INDEPENDENT SCHOOL DISTRICT, CODE OF CONDUCT AND STUDENT HANDBOOK 40 (2009), available at [http://www.dallasisd.org/parents/handbooks/student\\_handbook.pdf](http://www.dallasisd.org/parents/handbooks/student_handbook.pdf) (providing an outline of procedures both teachers and administration must follow when faced with a dating violence incident). Although the Teen Dating Violence statute does not require school districts to include such information in student handbooks, the Dallas Independent School District's approach is beneficial to its faculty and students and should be adopted by the statute and other school districts.

75. NORTH EAST INDEPENDENT SCHOOL DISTRICT OF SAN ANTONIO, STUDENT-PARENT HANDBOOK 25 (2009), available at <http://www.neisd.net/pupil/documents/handbook09-10PRINTREADY7-22-09.pdf> (failing to provide an intervention protocol for staff who are confronted with dating violence). Verbal, physical, and sexual abuse are mentioned in the Northeast Independent School District's Student Handbook and Student Code of Conduct, but nowhere is there mention of dating violence. *Id.*

76. See THE TEXAS DATING VIOLENCE PREVENTION TEAM, A GUIDE TO ADDRESSING DATING VIOLENCE IN TEXAS SCHOOLS 10, available at <http://governor.state.tx.us/files/women/program.pdf> (providing an example protocol that school personnel can follow when faced with an incident of dating violence).

77. Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 HARV. WOMEN'S L.J. 351, 352 (2003) (arguing that schools have a duty to protect their students).

ing to protect its students.<sup>78</sup> School districts can be found liable for harm resulting from dating violence under three different legal theories: under Title IX, if the victim demonstrates that the school failed to remedy a hostile education environment that the student had to suffer as a result of another student's abusive conduct;<sup>79</sup> under 42 U.S.C. § 1983, if the victim demonstrates that school denied her of her constitutionally protected right to be secure in her person;<sup>80</sup> and under tort liability, if the victim demonstrates that the school's failure to act constitutes negligent infliction of a emotional distress.<sup>81</sup>

Although such a responsibility may seem overwhelming, there are numerous Texas organizations that have created training guidelines and toolkits that school districts can use to train teachers and administrators. The Texas Prevention Team (the Texas Team) has created an in-depth awareness and prevention toolkit and has also composed a guide for school districts that "provides a number of resources to assist schools in the implementation of the new law, such as sample curricula, handouts, activities, and safety plans."<sup>82</sup> The Texas Team recommends that school

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78. *Id.* at 388 (explaining why training is important not only to better protect students but to also insulate school districts from liability).

79. *Id.* at 371–86 (providing an overview of the possible legal liabilities school districts may be subjected to for failing to protect their students from dating violence); see 20 U.S.C. § 1681(a) (2006) (prohibiting discrimination on the basis of sex in the realm of public education).

80. 42 U.S.C. § 1983 (2006); Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 HARV. WOMEN'S L.J. 351, 371–86 (2003) (explaining how students can bring a constitutional claim against their school for failure to protect them from dating violence). Carlson argues that bringing a claim under 42 U.S.C. § 1983 is not an effective method for seeking relief for two reasons. Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 HARV. WOMEN'S L.J. 351, 371–86 (2003). First, many courts have held that students may not bring the same claim under both Title IX and § 1983. *Id.* Second, § 1983 contains two theories of liability—the special danger theory and the custodial duty rule—both of which require the victim to manage additional burdens of proof that are, under current case law, difficult to meet. *Id.*

81. Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 HARV. WOMEN'S L.J. 351, 371–86 (2003) (explaining that although tort law may provide a legal remedy, tort law varies by state and thus victims have different rights based on what state they live in). A student's success in pursuing a tort claim depends largely on how each state's common law addresses a school's legal liability for injuries suffered during altercations between students. *Id.*; see also Boyle v. Kerr, 855 S.W.2d 593, 595–96 (Tex. 1993) (holding that Texas does not recognize a claim for negligent infliction of emotional stress). Although Texas does not recognize the tort of negligent infliction of emotional distress, Texas school districts can still be sued under Federal law as discussed above. However, school districts in other jurisdictions should be aware that they can be subject to tort liability depending on the tort law of their state.

82. THE TEXAS DATING VIOLENCE PREVENTION TEAM, AN EVALUATION OF THE TEXAS TEAM'S TEEN DATING VIOLENCE AWARENESS AND PREVENTION TOOLKIT 3

personnel, including school administrators, teachers, health educators, school nurses, and other school staff, participate in annual workshops providing training on identifying and responding to teen dating violence.<sup>83</sup> School districts should utilize the resources provided by organizations, such as those created by the Texas Team, which are specifically designed for helping school districts protect their students from dating violence.

### B. *The Requirement of Educating Students*

One of the most important requirements set forth in the Teen Dating Violence statute is a school district's obligation to provide prevention education to its students.<sup>84</sup> This requirement is significant because "[l]eaving prevention to the law alone is not working."<sup>85</sup> Such prevention education serves two purposes: preventing initial incidences of dating violence from occurring and preventing an abuser from engaging in violent tendencies.<sup>86</sup>

Some Texas school districts have taken this requirement seriously and have implemented prevention education into their curriculum, such as Rockwall Independent School District, which sought the assistance of the New Beginnings Center to educate students on dating violence during

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(2008), available at <http://www.utexas.edu/research/cswr/idvsa/dl/tdv.pdf> (explaining the importance of the toolkit and its value to schools); see also THE TEXAS DATING VIOLENCE PREVENTION TEAM, A GUIDE TO ADDRESSING DATING VIOLENCE IN TEXAS SCHOOLS 9-12, available at <http://governor.state.tx.us/files/women/program.pdf> (offering Texas school districts a sample intervention protocol addressing the problem of teen dating violence).

83. THE TEXAS DATING VIOLENCE PREVENTION TEAM, A GUIDE TO ADDRESSING DATING VIOLENCE IN TEXAS SCHOOLS 5, available at <http://governor.state.tx.us/files/women/program.pdf> (explaining the necessity of having all school personnel get involved with dating violence prevention education). "Training may include defining the issues of teen dating violence and sexual violence, recognizing warning signs, identifying issues of confidentiality and safety, the laws pertaining to interpersonal violence, and appropriate school-based interventions." *Id.*

84. TEX. EDUC. CODE ANN. § 37.0831(b)(2) (West Supp. 2009) (requiring schools to address "awareness education for students and parents.").

85. Tiffany J. Zwicker, Note, *Education Policy Brief: The Imperative of Developing Teen Dating Violence Prevention and Intervention Programs in Secondary Schools*, 12 S. CAL. REV. L & WOMEN'S STUD. 131, 158 (2002) (concluding that secondary schools are in the best position to educate teens on dating violence). "Combining preventive education with intervention strategies and mandated reporting at secondary schools may have a tremendous impact on the lives of young students who are just beginning to develop patterns of dating." *Id.*

86. *Id.* at 147 (explaining that there is a primary and secondary purpose served through dating violence prevention programs).

health class.<sup>87</sup> In a more peer-oriented approach, Carrollton-Farmers Branch Independent School District is allowing their students to participate in the Students Tackling Abusive Relationships Together, or START program, in which students are trained in order to educate other classmates about dating violence.<sup>88</sup> Some other school districts, however, have skirted around this statutory requirement as evidenced by their luke-warm attempts to provide their students with prevention education. For example, Garland School District created the “Xpose the Secrets of Teen Dating Violence” campaign in which 150 students wear t-shirts that have teen dating violence messages and statistics written on them.<sup>89</sup>

All of the above prevention education methods are satisfactory under the equivocal language of the Teen Dating Violence statute. As the statute is currently written, Rockwall Independent School District employee Nancy Farrar feels that “[t]he state really didn’t give [school officials a] curriculum to follow.”<sup>90</sup> As the discussion below will demonstrate, the Teen Dating Violence statute will be more effective by setting guidelines for school districts to use when implementing a prevention education program. The Teen Dating Violence statute should state that prevention education must be given in a manner that provides comprehensive information to students about dating violence. The Teen Dating Violence statute should also make such education mandatory for all students at some point during their academic studies, such as incorporating dating violence information into the health class curriculum.

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87. Matthew Haag, *Texas School Districts Trying to Combat Teen Dating Violence: Texas Schools Take Different Paths to Shape Healthy Relationships*, DALLAS MORNING NEWS, Mar. 4, 2008, available at 2008 WLNR 4259644 (stating that school districts across the greater Dallas area are experimenting with community organizations to create and implement effective dating violence awareness programs).

88. *Id.* (describing the various dating violence prevention programs school districts are implementing across Texas).

89. Richard Abshire, *Observance Red-Flags Teen Dating Violence: New Beginning Center in Garland at Forefront of Informing the Young*, DALLAS MORNING NEWS, Feb. 9, 2009, available at 2009 WLNR 2553364 (describing Garland School District’s approach to educating its students on dating violence). I argue that the Garland School District’s approach to educating its students on dating violence is a “luke-warm” attempt because the t-shirts only state statistics and shocking messages. Their efforts do not accomplish the critical goal of teaching students why dating violence is wrong or correct teen misconceptions on dating violence. Moreover, Garland School District’s approach conveys to students that the school district does not take the problem of teen dating violence seriously enough to implement a more thoughtfully developed and effective educational program that could impact the safety and well-being of its students.

90. Matthew Haag, *Texas School Districts Trying to Combat Teen Dating Violence: Texas Schools Take Different Paths to Shape Healthy Relationships*, DALLAS MORNING NEWS, Mar. 4, 2008, available at 2008 WLNR 4259644 (conveying the opinion of one school employee regarding the enactment of the Teen Dating Violence statute).

### i. The Goal of Awareness Education

Awareness education can change teenage perceptions of dating violence.<sup>91</sup> A teenager's inexperience and immaturity with respect to relationships and relationship problems may cause a teen couple to exaggerate gender roles.<sup>92</sup> Consequently, when the dominant partner engages in abusive behavior, the submissive partner may think such behavior is permissible as long as the abuse does not become too severe,<sup>93</sup> and a teenager's inexperience with relationships can also cause the teen to believe that abuse in a relationship is normal.<sup>94</sup> Teens may also have the perception that victims of dating violence are at least partly responsible

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91. Tiffany J. Zwicker, Note, *Education Policy Brief: The Imperative of Developing Teen Dating Violence Prevention and Intervention Programs in Secondary Schools*, 12 S. CAL. REV. L & WOMEN'S STUD. 131, 151 (2002) (arguing that dating violence prevention programs are an effective way for teens to learn about healthy relationships). Substantial evidence is building that points to the effectiveness of education on changing teen attitudes surrounding dating violence. *Id.*

92. Kathryn E. Suarez, Comment, *Teenage Dating Violence: The Need for Expanded Awareness and Legislation*, 82 CAL. L. REV. 423, 427 (1994) (explaining the use of gender roles by teens in dating relationships). Teens take on these exaggerated gender roles in order to conform to "peers norms," such as the belief that males are supposed to take an aggressive, dominating, and controlling role in the relationship. *Id.* This mentality can lead males to inflict violence against their female partners to fulfill the role that their peers expect them to play. *Id.* Females are often expected by their peers to fulfill the more submissive role as the relationship's caretaker, and consequently rely on their male partners to validate their own self-esteem and achieve social acceptance. *Id.*; Devon M. Largio, Note, *Refining the Meaning and Application of "Dating Relationship" Language in Domestic Violence Statutes*, 60 VAND. L. REV. 939, 952 (2007) (arguing that teens follow stereotypical gender roles, placing victims in greater danger). Because many teen girls adhere to their stereotypical gender roles, the cycle of violence is amplified, and many victims are exposed to greater risk of abuse and "traumatic bonding," which occurs when a victim feels increasingly attached to her abuser while she loses touch with her own identity. Devon M. Largio, Note, *Refining the Meaning and Application of "Dating Relationship" Language in Domestic Violence Statutes*, 60 VAND. L. REV. 939, 952 (2007); accord Carole A. Sousa, *Teen Dating Violence: The Hidden Epidemic*, 37 FAM. & CONCILIATION CTS. REV. 356, 361 (1999) (explaining the reason why teens conform to the stereotypical behaviors of passive women and dominant men is often the result of peer pressure).

93. Cheryl Hanna, *Sex Before Violence: Girls, Dating Violence, and (Perceived) Sexual Autonomy*, 33 FORDHAM URB. L.J. 437, 449 (2006) (expressing the belief held by some teens that some violence in their relationships is acceptable, so long as the abuse does not become too harsh).

94. Kathryn E. Suarez, Comment, *Teenage Dating Violence: The Need for Expanded Awareness and Legislation*, 82 CAL. L. REV. 423, 429 (2004) (commenting that "[v]iolence . . . is seen by some teens as a normal way to express love."). A teen victim's inexperience and simultaneous confrontation with abuse at the beginning of her romantic encounters can cause her to experience "normative confusion" in that violence is viewed as a normal expression of love. *Id.*



for the abuse inflicted on them,<sup>95</sup> or that their relationship with their abuser is stronger after a violent episode because such violence is a demonstration of love and affection.<sup>96</sup> To illustrate, the teenage response to singer Chris Brown's highly publicized attack on his pop-star girlfriend, Rihanna, revealed that a majority of teens believed Chris Brown should not be punished for his actions and that Rihanna was to blame for causing the fight.<sup>97</sup>

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95. Tiffany J. Zwicker, Note, *Education Policy Brief: The Imperative of Developing Teen Dating Violence Prevention and Intervention Programs in Secondary Schools*, 12 S. CAL. REV. L. & WOMEN'S STUD. 131, 137 (2002) (discussing a common misperception teen victims often have about their victimization). One study revealed that some teen victims attribute the causes of teen dating violence to the victim's own personality, provocation, or need for affiliation with a man. *Id.*; Carole A. Sousa, *Teen Dating Violence: The Hidden Epidemic*, 37 FAM. & CONCILIATION CTS. REV. 356, 360 (1999) (explaining why teens tend to take responsibility for their own victimization). Since teens may blame themselves for the abuse that they endure, they may also feel that they can control it. Carole A. Sousa, *Teen Dating Violence: The Hidden Epidemic*, 37 FAM. & CONCILIATION CTS. REV. 356, 360 (1999). This self-blame is also reinforced when the abuser blames the victim for him "needing" to act out. *Id.*

96. Cheryl Hanna, *Sex Before Violence: Girls, Dating Violence, and (Perceived) Sexual Autonomy*, 33 FORDHAM URB. L.J. 437, 454 (2006) (explaining how some teen victims misinterpret the abuse that is inflicted on them as an expression of love). Some teens have expressed "a strong desire to explore violent sex" which has led some scholars to suggest that there is a certain degree of violence expected in sexual relationships between adolescents. *Id.* This can lead to teens confusing the feelings conveyed through violence and sex with love and affection from their partners. *Id.*; Devon M. Largio, Note, *Refining the Meaning and Application of "Dating Relationship" Language in Domestic Violence Statutes*, 60 VAND. L. REV. 939, 952-53 (2007) (explaining the misguided understanding of abuse by teens). It is harder for teens to recognize that their relationship is abnormal, and therefore they may deny that they are being abused instead of confronting their abuser. Devon M. Largio, Note, *Refining the Meaning and Application of "Dating Relationship" Language in Domestic Violence Statutes*, 60 VAND. L. REV. 939, 952 (2007); Carole A. Sousa, *Teen Dating Violence: The Hidden Epidemic*, 37 FAM. & CONCILIATION CTS. REV. 356, 361 (1999) ("A teenager may view possessive jealousy and controlling behavior as loving devotion and may confuse the perpetrator's remorse with intimacy."). Teens lack experience with intimacy and are thus prone to confuse jealousy and possessiveness as normal elements in a passionate relationship. Carole A. Sousa, *Teen Dating Violence: The Hidden Epidemic*, 37 FAM. & CONCILIATION CTS. REV. 356, 360 (1999).

97. Jan Hoffman, *Teenage Girls Stand By Their Man*, N.Y. TIMES, Mar. 18, 2009, available at 2009 WLNR 5177221 (discussing the teen response to the violent attack between Chris Brown and Rihanna).

In a recent survey of 200 teenagers by the Boston Public Health Commission, 46 percent said Rihanna was responsible for what happened; 52 percent said both bore responsibility, despite knowing that Rihanna's injuries required hospital treatment. On a Facebook discussion, one girl wrote, "she [probably] ran into a door and was too embarrassed so blamed it on [C]hris."

*Id.*

Prevention education can be used to correct these misperceptions. Prevention education will not only help students avoid being involved in dating violence but can also help current victims get out of an abusive relationship. In fact, effective prevention programs have proven to increase student awareness of unacceptable dating behavior, decrease the acceptance of abusive behavior by a dating partner, and improve attitudes about seeking help.<sup>98</sup> Not only can prevention education be used to protect students from becoming victims but can also be used to educate young abusers about the wrongness of their actions. Prevention during adolescence is essential because early intervention has proven to reduce future abuse as victims transition from adolescence into adulthood.<sup>99</sup> Prevention education can also make students conscious that their school's faculty and staff are available to assist them in ending an unhealthy relationship and protecting them from their abuser.<sup>100</sup>

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98. THE TEXAS DATING VIOLENCE PREVENTION TEAM, AN EVALUATION OF THE TEXAS TEAM'S TEEN DATING VIOLENCE AWARENESS AND PREVENTION TOOLKIT 9-10 (2008), available at <http://www.utexas.edu/research/cswr/idvsa/dl/tdv.pdf> (evaluating the methodology and effectiveness of six different dating violence prevention programs used across the county). The programs evaluated were STAR (based out of Illinois), Choose Respect, Ending Violence, Safe Dates, Expect Respect, and Teen PEACE. *Id.* STAR was effective in conveying a basic understanding of the signs of teen dating violence. *Id.* at 10. Students who participated in the Choose Respect program learned to differentiate jealousy from love, to identify warning signs of abusive relationships, and to recognize that abusive relationships are unacceptable. *Id.* at 9. The Ending Violence program was effective in providing general information about teen dating violence and encouraging teens to seek help. *Id.* Students who participated in the Safe Dates program became less tolerant of dating violence, and had a greater knowledge about the services for victims and perpetrators of teen dating violence. *Id.* at 10. The Expect Respect program was effective at increasing teenagers' abilities to identify abusive relationships and improve current relationships. *Id.* at 9. The Teen PEACE program, which is geared toward teens in the juvenile court system, was effective in teaching teens to respect others and avoid controlling behaviors towards significant others. *Id.* at 10.

99. Paige Hall Smith, Jacquelyn W. White & Lindsay J. Holland, *A Longitudinal Perspective on Dating Violence Among Adolescent and College-Age Women*, 93 AM. J. PUB. HEALTH 1104, 1108 (2003), available at <http://ajph.aphapublications.org/cgi/reprint/93/7/1104.pdf> (discussing the implications of prevention education).

Our findings suggest that if we are able to prevent the occurrence of dating violence victimization during adolescence, we may also be able to prevent dating violence during college and possibly domestic violence in adulthood as well. Because young women who experience physical or sexual victimization in high school are at elevated risk for victimization in college, early intervention and treatment for these women is critical.

*Id.*

100. This provides at least a partial solution to the trust problem many students have with school faculties. See Tiffany J. Zwicker, Note, *Education Policy Brief: The Imperative of Developing Teen Dating Violence Prevention and Intervention Programs in Secondary*

## ii. Choosing an Effective Prevention Education Program

Schools should understand how important it is for them to educate their students on dating violence because “behaviors in and attitudes toward relationships learned during [a teenager’s] formative years frequently develop into lifelong patterns.”<sup>101</sup> In implementing a prevention program, school districts need to select programs that are proven effective. Providing sporadic opportunities for students to learn about dating violence will not prove effective even though satisfactory under the current language the Teen Dating Violence statute.<sup>102</sup> As one Dallas educator pointed out, “one of the most ineffective things is to get a bunch of kids in an auditorium and play them a video.”<sup>103</sup> Instead, prevention education should be conducted over a period of time, as opposed to one isolated session.<sup>104</sup> Such continued coverage of dating violence affords reinforcement and ensures that students are being given enough time to understand and appreciate the important information that is being given to them.

School districts should provide prevention education during middle school and high school.<sup>105</sup> Education on dating violence in secondary schools is ideal because it is during the teenage years that people are in their most susceptible learning stage.<sup>106</sup> Break the Cycle, an organization

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*Schools*, 12 S. CAL. REV. L. & WOMEN’S STUD. 131, 136 (2002) (indicating that teens are unlikely to tell school officials when they are experiencing dating violence).

101. Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 HARV. WOMEN’S L.J. 351, 353 (2003) (emphasizing abuse prevention during the critical years of physical and emotional development in a teenager’s life).

102. TEX. EDUC. CODE ANN. § 37.0831(b)(2) (West Supp. 2009) (requiring that school districts merely address “awareness education for students and parents.”).

103. Matthew Haag, *Texas School Districts Trying to Combat Teen Dating Violence: Texas Schools Take Different Paths to Shape Healthy Relationships*, DALLAS MORNING NEWS, Mar. 4, 2008, available at 2008 WLNR 4259644 (reporting on the approach by Dallas school districts to satisfy their duties under the Teen Dating Violence statute). Dallas school officials are unsure of what they need to do in order to satisfy their duties under the Teen Dating Violence statute because the statute does not offer specific details describing their responsibilities. *Id.* Dallas school districts are currently experimenting with different methods and programs. *Id.*

104. THE TEXAS DATING VIOLENCE PREVENTION TEAM, A GUIDE TO ADDRESSING DATING VIOLENCE IN TEXAS SCHOOLS 6, available at <http://governor.state.tx.us/files/women/program.pdf> (advocating that dating violence curriculum should provide on-going awareness education).

105. See Susan L. Pollet, *Teen Dating Violence is Not ‘Puppy Love,’* 32 WESTCHESTER B.J. 29, 31 (2005) (arguing that education in the middle and high school years is an ideal place to start fighting teen dating violence).

106. *Id.* at 30 (explaining that teens are going through a particularly important developmental period in their lives). “It has been maintained that teens are especially susceptible to becoming ‘trapped’ in the cycle of violence because of their vulnerable

that has educated thousands of students in New York, believes that “raising awareness about the issue is key—especially as it occurs at ages when kids are still developing.”<sup>107</sup> Thus, awareness education can have an impressionable effect on teenage students by providing them with important information that will be valuable to them now and into adulthood.

There are a number of school and organizational programs nationwide, which have proven to effectively increase student awareness on dating violence.<sup>108</sup> The Texas Team has researched the effectiveness of their prevention education program and found positive results.<sup>109</sup> Their “tool-kit” provides schools with curriculum and materials developed using nationally conducted studies on teen dating violence as well as Texas-specific materials and resources.<sup>110</sup> After teachers conducted the three-day prevention program, surveys administered before and after the implementation of the toolkit found that a significant number of students became aware of what teen dating violence is, learned how to report incidents of dating violence, and knew what resources they could use if ever confronted with dating violence.<sup>111</sup> Texas schools that are unsure of how to develop or implement a prevention program should seek the assistance

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developmental stage. They are going through emotional, intellectual and physiological changes while struggling with self-esteem issues and identity formation.” *Id.*

107. Bridget Harrison, *Girls’ Date Hate—Meaner Than Boys: Study*, N.Y. POST, Nov. 18, 2004, available at 2004 WLNR 19651953 (reporting on the various dating violence prevention programs in New York).

108. See Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 HARV. WOMEN’S L.J. 351, 386–87 (2003) (describing an effective prevention program used in Massachusetts).

In the late 1980s, one high school in Massachusetts implemented a two-part program geared toward educating students about domestic violence. One part of the program involves a school-wide “Teen Dating Violence Awareness Week,” . . . The school also implemented a classroom education program for all freshman in health education classes, during which the students participate in a three-session teen dating violence prevention program. These two programs have had visible impact on the attitudes of students in the high school: there reportedly have been several incidents of students recognizing abuse and confronting it in the school hallways, as well as an increase in students agreeing that violence is not a normal part of dating.

*Id.* (footnotes omitted).

109. THE TEXAS DATING VIOLENCE PREVENTION TEAM, AN EVALUATION OF THE TEXAS TEAM’S TEEN DATING VIOLENCE AWARENESS AND PREVENTION TOOLKIT 18 (2008), available at <http://www.utexas.edu/research/cswr/idvsa/dl/tdv.pdf> (evaluating the effectiveness of the Texas Team’s toolkit when experimented with in two Dallas high schools).

110. *Id.* at 4 (discussing the methodology used in evaluating the Texas Team’s prevention toolkit).

111. *Id.* at 18 (reporting on the results of student surveys and their interpretation of those results).

of organizations, like the Texas Team, which have already developed proven prevention programs.

### C. *The Requirement of Enforcing Protective Orders at School*

The Teen Dating Violence statute requires Texas school districts to address enforcement of protective orders.<sup>112</sup> As discussed earlier, Texas allows minors to obtain protective orders only through the representation of an adult.<sup>113</sup> Protective orders are a helpful tool for victims of abuse because a court can order an abuser to refrain from communicating with or seeing the victim, as well as order the abuser to complete a battering intervention and prevention program.<sup>114</sup> Schools should provide students with information on how they can initiate the process of obtaining a protective order in addition to recognizing their enforcement at school.

#### i. *Assisting Victims in Obtaining Protective Orders*

Schools should utilize pro se protective order packets, which are a compilation of documents that assist victims in getting a protective order in Texas.<sup>115</sup> The Protective Order Task Force created pro se protective order packets after a state-wide survey revealed that victims of violence have limited access to protective orders.<sup>116</sup> The Texas Supreme Court's goal in forming the Protective Order Task Force was "to improve access to protective orders for victims of domestic violence,"<sup>117</sup> and, undoubtedly, that would include improving access for teen victims.

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112. TEX. EDUC. CODE ANN. § 37.0831(b)(2) (West Supp. 2009) ("A dating violence policy must: . . . address . . . enforcement of protective orders . . .").

113. *See id.* § 82.002(b)-(c) ("Any adult may apply for a protective order to protect a child from family violence.").

114. *Id.* § 85.022 (outlining what a court can order an abuser to do or prohibit from doing when issuing a protective order).

115. Lorrie Cantrell, *Changing Texas Law to Include Minors in Protective Order Legislation*, DOMESTIC VIOLENCE AND THE LAW, Nov. 13, 2008, at 14, available at [www.abanet.org/domviol/pdfs/minors\\_in\\_protective\\_legislation.doc](http://www.abanet.org/domviol/pdfs/minors_in_protective_legislation.doc) (discussing how pro se protective order packets can increase access to court ordered protection for minors in violent relationships). Cantrell argues that the current language in pro se protective order packets is overwhelming and confusing for teen dating violence issues. *Id.* She suggests the packet contain a summary of the issues relevant to teenagers and be made more accessible to teens by placing packets in schools and other places that teens are likely to frequent. *Id.*

116. Emily Jones, *Legal Aid*, 67 TEX. B.J. 50, 50 (2004) (explaining how various Texas organizations are trying to increase information and access of legal materials to the public). The Texas Supreme Court formed the Protective Order Task Force by the request from the Texas Access to Justice Commission and the Bar of Texas Family Law Section. *Id.*

117. *Id.* (detailing what the Texas Supreme Court expects that Protective Order Task Force to accomplish).

The Supreme Court directed the task force to draft an easily readable domestic violence protective order kit, including but not limited to an application and an order; an

When a teacher or other staff member witnesses or learns of a dating violence incident, they should not only assist the victim in filing a school complaint but also refer them to the pro se protective order packet. Although the information in the packet can be very technical and confusing, schools could provide students with a summary of the procedures they will need to satisfy in order to obtain an order of protection.<sup>118</sup> For example, one of the procedures that students will need to be aware of is that, under Texas law, minors cannot petition for a protective order and must instead have an adult petition on their behalf.<sup>119</sup> In addition to supplying pro se packets, schools should be able to petition on behalf of a student if the student is unable to have another adult, such as a parent, petition for them.

School districts should also refer students to other resources and organizations that provide teens with assistance in obtaining protective orders. For example, the Texas Advocacy Project has dedicated its resources to helping victims of domestic violence and has also established the Teen Justice Initiative to specifically assist teen victims of dating violence.<sup>120</sup> The Teen Justice Initiative provides an array of services to teen victims, including providing free legal advice and legal representation for obtaining protective orders.<sup>121</sup> Not only are abuse help lines an easily accessible way students can get more information on obtaining protective orders, they also provide the victim with a person they can speak to about their experience anonymously. For example, the Texas Council of Family Violence has founded a national domestic helpline for teens over the phone or through online chat and provides information to victims and

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implementation plan that will make the protective order kit readily available both online and directly from law enforcement officers who respond to family violence calls; and a final report to the court . . . .

*Id.*

118. Lorrie Cantrell, *Changing Texas Law to Include Minors in Protective Order Legislation*, DOMESTIC VIOLENCE AND THE LAW, Nov. 13, 2008, at 14, *available at* [www.abanet.org/domviol/pdfs/minors\\_in\\_protective\\_legislation.doc](http://www.abanet.org/domviol/pdfs/minors_in_protective_legislation.doc) (advocating for a change in the law to make pro se protective orders available to teens). If teens could file pro se protective orders, schools could provide easily understandable summaries telling students how to use a pro se protective order packet or have a school employee help them with the procedures. *Id.*

119. TEX. FAM. CODE ANN. § 82.002 (West 2008).

120. Texas Advocacy Project, Teen Justice Initiative, [http://texasadvocacyproject.org/program\\_service.php?pid=14](http://texasadvocacyproject.org/program_service.php?pid=14) (providing a website specifically tailored to helping teen victims of dating violence).

121. *Id.* (outlining the various services the Texas Advocacy's Teen Justice Initiative provides to victims of dating violence). Not only does the Teen Justice Initiative provide these services but it also works with other organizations in an effort to increase awareness about a teen victim's legal rights when faced with a violent partner. *Id.*

parents about obtaining protective orders, as well as assistance in other matters.<sup>122</sup>

ii. School Enforcement of Protective Orders

Once a victim obtains a protective order, with or without the school's assistance, the issue becomes how to enforce the protective order when both the victim and alleged abuser attend the same school.<sup>123</sup> Just because an alleged offender has a protective order against him or her does not mean he or she will follow it. In enforcing a protective order, schools need to implement a plan for victims in order to maintain continued safety, such as reassignment of class or transportation schedules, or even transferring the alleged offender to another school.<sup>124</sup> Transferring the alleged perpetrator to another school should be the preferred method of eliminating contact between the victim and alleged batterer because it ensures that the victim will not be subject to any more victimization or retaliation by the alleged offender.<sup>125</sup> Any hardship that might arise from implementing the safety plan should be placed on the alleged offender, not the victim.<sup>126</sup> Although implementing a safety plan may be burdensome on the school, "the burden does not outweigh the potential harm that would be created by an incident of dating violence occurring on school grounds, possibly with the school being held liable for failure to protect a victim."<sup>127</sup>

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122. Sarah Viren, *Abuse Helpline Goes Tech-Savvy for Teens: Texas Takes a Youthful Approach in an Effort to End Dating Violence*, HOUSTON CHRON., Feb. 9, 2008, available at 2008 WLNR 2648768 (commenting on the Texas Council of Family Violence's high-tech approach to helping teens involved in dating violence).

123. Lorrie Cantrell, *Changing Texas Law to Include Minors in Protective Order Legislation*, DOMESTIC VIOLENCE AND THE LAW, Nov. 13, 2008, at 18, available at [www.abanet.org/domviol/pdfs/minors\\_in\\_protective\\_legislation.doc](http://www.abanet.org/domviol/pdfs/minors_in_protective_legislation.doc) (recognizing the problems faced by a school when a victim and an abuser share the same classroom).

124. *Id.* (arguing that a victim's needs should be controlling when a school is trying to develop a plan in protecting that person). Cantrell asserts that if a batterer attempts to assault, or actually does assault a person on school grounds, then both teachers and students should take steps to assist the victim, and they should learn how to be prepared should a violent situation occur on school grounds. *Id.*

125. *See id.* at 18–19 (arguing that the preferred method of separation between victim and abuser should be to assign the abuser to a different school).

126. THE TEXAS DATING VIOLENCE PREVENTION TEAM, A GUIDE TO ADDRESSING DATING VIOLENCE IN TEXAS SCHOOLS 4, available at <http://governor.state.tx.us/files/women/program.pdf> (arguing that the burden of schedule and transportation changes should be put on the alleged abuser). "Whenever possible, face-to-face contact between the victim and alleged perpetrator should be avoided. If changes need to be made, attention may be given to the victim's preference. The burden for any bus, classroom or other schedule changes should be on the alleged perpetrator, not the victim." *Id.*

127. Lorrie Cantrell, *Changing Texas Law to Include Minors in Protective Order Legislation*, DOMESTIC VIOLENCE AND THE LAW, Nov. 13, 2008, at 18, available at [www.abanet.org](http://www.abanet.org).

#### D. *The Requirement of Counseling*

School counselors have a legal and ethical duty to help students that experience violence from other students, including violence from an intimate partner.<sup>128</sup> Counseling is not only important in addressing the psychological effects that can result from abuse, but is also important because it communicates to students that there is another support system, beside friends and family, that can help them cope with their traumatic experience.<sup>129</sup> During the 15th annual Counselors Institute Conference, Texas school counselors expressed anxiousness to help students involved in violent relationships because they realized that they are a victim's best source of support at school.<sup>130</sup> Both victims and offenders of dating violence should be provided with counseling, whether through the school counselor or an outside agency that specializes in helping victims of dating violence.

##### i. Counseling Victims

Counselors have to the opportunity to address the psychological impact abuse can have on teen victims during the developmental stage in the victims life.<sup>131</sup> The role of the school counselor is not just to assist stu-

org/domviol/pdfs/minors\_in\_protective\_legislation.doc (concluding that the burden of enforcing protective orders in school is outweighed by the benefit a victim realizes in the mandated protection).

128. *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 642–49 (1999); Mary A. Hermann, *An Ethical and Legal Perspective on the Role of School Counseling in Preventing Violence in Schools*, PROF. SCH. COUNSELING, Oct. 1, 2002, available at 2002 WLNR 5546253 (explaining the various ethical and legal standards school counselors must adhere to when helping students involved in school violence and the liability to can result from inaction).

129. See Kathryn E. Suarez, Comment, *Teenage Dating Violence: The Need for Expanded Awareness and Legislation*, 82 CAL. L. REV. 423, 466 (1994) (explaining the importance of counseling for teen victims of dating violence).

130. Laura Tillman, *Changing Landscape: Mental Health Workers Address New Challenges*, BROWNSVILLE HERALD, Jan. 25, 2009, available at 2009 WLNR 1449102 (commenting on the Counselor Institute Conference's goals and achievements). While school counselors are anxious to help victims, some counselors feel unprepared to handle dating violence issues. *Id.*

131. See Devon M. Largio, Note, *Refining the Meaning and Application of "Dating Relationship" Language in Domestic Violence Statutes*, 60 VAND. L. REV. 939, 953 (2007) (explaining the lasting psychological damage victims of teen dating violence can experience). Abuse can "cause teens to question how the world is supposed to work and may 'shatter' their confidence in handling the situation on their own." *Id.* Dating violence can also lead to victims developing eating disorders and continually participating in unhealthy relationships. *Id.*; Kathryn E. Suarez, Comment, *Teenage Dating Violence: The Need for Expanded Awareness and Legislation*, 82 CAL. L. REV. 423, 430 (1994) (arguing that the psychological effects that teen victims of dating violence experience are detrimental). "The psychological effects of teenage abuse are just as severe as the physical injuries and



dents with academic planning, but to also help students with their social and emotional development.<sup>132</sup> Abuse unquestionably impairs a victim's social and emotional development:

When a teen is battered, critical developmental work is interrupted. The stress and confusion of an abusive relationship can leave the victim with a diminished capacity to think, learn, and plan for the future. Abusers teach the young victims that life is unfair, cruel, and unpredictable. The poor self-concept that results can affect the victim's willingness to take the risks necessary to learn and practice new skills.<sup>133</sup>

One major obstacle facing school counselors is helping victims rebuild their identity and self-esteem.<sup>134</sup> Over the course of a violent relationship, teen victims develop a "traumatic bonding" with their abuser, which causes their confidence in themselves to decline as the unhealthy attachment to their abuser intensifies.<sup>135</sup> Teen victims lack the maturity to han-

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need to be taken seriously, especially since they occur during the [victim's] formative years." Kathryn E. Suarez, Comment, *Teenage Dating Violence: The Need for Expanded Awareness and Legislation*, 82 CAL. L. REV. 423, 430 (1994).

132. See Jennifer Teramoto Pedrotti et al., *Promoting Hope: Suggestions for School Counselors*, PROF. SCH. COUNSELING, Dec. 1, 2008, available at 2008 WLNR 23122597 (discussing how school counselors can address the psychological and emotional issues a student may be facing with hope).

133. Carole A. Sousa, *Teen Dating Violence: The Hidden Epidemic*, 37 FAM. & CONCILIATION CTS. REV. 356, 360-61 (1999) (explaining the detrimental effects a teen victim may encounter as a result of experiencing dating violence).

134. See Kathryn E. Suarez, Comment, *Teenage Dating Violence: The Need for Expanded Awareness and Legislation*, 82 CAL. L. REV. 423, 428 (2004) (emphasizing the importance of identity to teenagers and explaining how abuse affects it). "[S]ince the girlfriend equates her best interest with that of the relationship, her self-esteem and identity often become inextricably linked with the success of the relationship: 'A teen's identity is everything, . . .'" *Id.* Moreover, it is common for teens to feel insecure and unfulfilled in their family relationships, which may lead them to use their intimate relationships to fill that void. *Id.* As a result, many teenage girls will feel closer to their boyfriends than to their family members, which further lends to a diminishment of self-identity. *Id.*

135. Devon M. Largio, Note, *Refining the Meaning and Application of "Dating Relationship" Language in Domestic Violence Statutes*, 60 VAND. L. REV. 939, 952 (2007) (explaining the "traumatic bonding" that accounts for why so many teen victims stay in abusive relationships); Kathryn E. Suarez, Comment, *Teenage Dating Violence: The Need for Expanded Awareness and Legislation*, 82 CAL. L. REV. 423, 429 (1994) (describing the dangerous mentality teen victims develop in response to the abuse they are subjected to); See also Shari Roan, *Abused Women May Be "Hostages,"* L.A. TIMES, Aug. 20, 1991, available at 1991 WLNR 3860699 (arguing that battered women may suffer from Stockholm Syndrome causing them to bond with their violent partner like hostages bond with their captors).

Among abused women, indications that the syndrome has developed include signs that the victim is grateful for any act of kindness shown to her, denies the abuse, is

dle the violent situation in the correct manner and may be overcome with intense feelings that will inevitably consume their self-esteem.<sup>136</sup> Teen victims also tend to internalize blame for the abuse they have endured and may deny challenging situations rather than confront them.<sup>137</sup> School counselors should address all these issues in order to prevent a victim from transitioning to more severe mental issues, such as depression.

## ii. Counseling Violent Students

Not only are school counselors obligated to help victims of violence, but they are also required to help students who commit violence by educating them on the wrongness of their actions.<sup>138</sup> While counseling serves as a coping mechanism for victims, violent-students need to be aided differently in that counseling should facilitate their rehabilitation.

Counseling is needed for offenders to correct their personal misconceptions about what constitutes appropriate behavior in a relationship. “[T]een batterers are especially willing to downplay dating violence, refusing to accept responsibility for their actions, claiming that the victim deserved the abuse.”<sup>139</sup> Offenders may also believe that it is their right to

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hypervigilant to the abuser’s needs, is suspicious of people trying to help her, finds it difficult to leave the abuser and fears the abuser will come back to get her if she leaves.

Shari Roan, *Abused Women May Be “Hostages,”* L.A. TIMES, Aug. 20, 1991, available at 1991 WLNR 3860699.

136. Devon M. Largio, Note, *Refining the Meaning and Application of “Dating Relationship” Language in Domestic Violence Statutes*, 60 VAND. L. REV. 939, 952–53 (2007) (describing how abuse can impair the emotional development of young abuse victims). The rate at which teens are growing and developing necessarily makes teen abuse a distinct problem from abuse between adults. *Id.* at 952. Furthermore, since “teens tend to be more narcissistic than adults, they are more likely to internalize blame for their victimization.” *Id.* at 953; Kathryn E. Suarez, Comment, *Teenage Dating Violence: The Need for Expanded Awareness and Legislation*, 82 CAL. L. REV. 423, 428 (1994) (explaining the complex issues associated with teen dating violence as they relate to a victim’s self esteem).

137. Devon M. Largio, Note, *Refining the Meaning and Application of “Dating Relationship” Language in Domestic Violence Statutes*, 60 VAND. L. REV. 939, 952 (2007) (explaining the differences in how teen victims, as opposed to adult victims, handle their experience with abuse); Carole A. Sousa, *Teen Dating Violence: The Hidden Epidemic*, 37 FAM. & CONCILIATION CTS. REV. 356, 360 (1999) (explaining why teens tend to take responsibility for their own victimization).

138. Mary A. Hermann, *An Ethical and Legal Perspective on the Role of School Counseling in Preventing Violence in Schools*, PROF. SCH. COUNSELING, Oct 1, 2002, available at 2002 WLNR 5546253 (explaining that school counselors need to help violent students just as much as they need to help their victims).

139. Lorrie Cantrell, *Changing Texas Law to Include Minors in Protective Order Legislation*, DOMESTIC VIOLENCE AND THE LAW, Nov. 13, 2008, at 19 (2008), available at [www.abanet.org/domviol/pdfs/minors\\_in\\_protective\\_legislation.doc](http://www.abanet.org/domviol/pdfs/minors_in_protective_legislation.doc) (explaining why teen abus-

inflict such abuse.<sup>140</sup> An offender's misconceptions on dating violence can lead to the offender refusing to accept responsibility for his "justified" actions.<sup>141</sup> School counselors must aid offenders in dispelling these misconceptions by educating them on the wrongness of their actions through intervention programs, which have successfully reduced recidivism rates.<sup>142</sup> School counselors also have the opportunity to help young offenders overcome the various motivations they have for engaging in violent behavior, which include anger, jealousy, and a desire to control.<sup>143</sup>

### iii. Schools Should Use Outside Sources to Assist in Counseling

Although school counseling is a readily accessible source in helping victims cope with their experience, many school counselors feel that outside resources and assistance will better prepare them in helping victims.<sup>144</sup> Texas school districts should establish collaborative partnerships with agencies that have more resources and training in helping victims of dating violence. Collaborative partnerships between schools and community mental health agencies have become a growing trend across the country "[i]n an effort to provide a broad array of services that will assist students in dealing with the social and emotional issues they bring to the class-

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ers should also receive specialized counseling). A sense of accountability needs to be instilled in young abusers so they will be less likely to commit acts of abuse as adults. *Id.*

140. Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 HARV. WOMEN'S L.J. 351, 360 (2003) (explaining the misconceptions both victims and offenders of dating violence can have about dating behavior).

141. *Id.* (explaining how abusers may blame their victims in order to justify their anger and their abusive behavior).

142. Tiffany J. Zwicker, Note, *Education Policy Brief: The Imperative of Developing Teen Dating Violence Prevention and Intervention Programs in Secondary Schools*, 12 S. CAL. REV. L & WOMEN'S STUD. 131, 144-46 (2002) (arguing that counseling is imperative in addressing teen offenders of dating violence).

The three types of non-incarcerated treatment that showed the strongest and most consistent evidence of reducing recidivism were interpersonal skills training, individual counseling and behavior programs. The types of treatment that showed the clearest evidence of ineffectiveness were wilderness/challenge programs, early release from probation or parole, deterrence programs and vocational programs. *Id.* at 146 (footnotes omitted).

143. Devon M. Largio, Note, *Refining the Meaning and Application of "Dating Relationship" Language in Domestic Violence Statutes*, 60 VAND. L. REV. 939, 947 (2007) (describing the motivations lying behind teen dating violence).

144. Laura Tillman, *Changing Landscape: Mental Health Workers Address New Challenges*, BROWNSVILLE HERALD, Jan. 25, 2009, available at 2009 WLNR 1449102 ("We know our students have rights, but there are so many other resources we should be connecting with, to maximize those rights," said Yesenia Gonzalez, a guidance counselor at the Teenage Parent Program School in Alamo.").

room.”<sup>145</sup> These partnerships can reduce the burden many schools are faced with by helping school counselors with the large caseloads they may already be handling.<sup>146</sup> These partnerships also allow professionals to specifically attend to the special mental health needs of dating violence victims, a group which school counselors may not be trained in helping.<sup>147</sup>

The Austin Independent School District has developed a number of these collaborative partnerships by employing nineteen “School to Community Liaisons”—staff professionals that connect families to various community agencies that provide counseling services tailored to the specific needs of students.<sup>148</sup> The Teen Dating Violence statute should mandate other Texas school districts to develop similar collaborative relationships.

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145. Chris Brown et al., *Collaborative Relationships: School Counselors and Non-School Mental Health Professionals Working Together to Improve the Mental Health Needs of Students*, PROF. SCH. COUNSELING, April 1, 2006, available at 2006 WLNR 6417610 (advocating for collaborative partnerships between schools and mental health agencies). “[S]chools are in need of myriad services in order to address the emotional, behavioral, and social needs of their student body, and the collaborative partnerships of schools and mental health agencies appear to be a step in the right direction.” *Id.*

146. *Id.* (suggesting school administrators are aware of the growing caseloads school counselors face); Kirk Zinck, *Action Research Shows Group Counseling Effective with At-Risk Adolescent Girls*, PROF. SCH. COUNSELING, Oct. 31, 2000, available at 2000 WLNR 4530689 (commenting on research that has been done on the effectiveness of group counseling in schools). If there is a high occurrence of dating violence at a school or resources are low, school counselors can utilize group counseling as an efficient means of assisting all victims. Kirk Zinck, *Action Research Shows Group Counseling Effective with At-Risk Adolescent Girls*, PROF. SCH. COUNSELING, Oct. 31, 2000, available at 2000 WLNR 4530689. Research has shown that group counseling, like individual counseling, is an effective way to help victims of dating violence. *Id.* Group counseling has also proven effective with addressing other adolescent issues, such as school drop-out rates and sexual abuse. *Id.* In one study, a group of high school girls participated in ten hour-long sessions of group counseling centered around the theme of “healthy relationships,” which focused not only on intimate relationships, but also friendship, as well as alcohol and drugs. *Id.* The results of the study revealed that “group counseling appeared effective in promoting individual change” as well as satisfying “many of the needs met in individual counseling.” *Id.*

147. See Chris Brown, *Collaborative Relationships: School Counselors and Non-School Mental Health Professionals Working Together to Improve the Mental Health Needs of Students*, Professional School Counseling, April 1, 2006, available at 2006 WLNR 6417610 (discussing the effectiveness and perceptions on collaborative partnerships between schools and mental health agencies).

148. Austin Independent School District, Academics: Student Support Services: School to Community Liaisons, <http://www.austinisd.org/academics/sssc/> (providing information on how parents and students can gain assistance through the help of School to Community Liaisons). School to Community Liaisons provide direct crisis counseling, at-home visits, family counseling, consultation with school faculty and staff regarding the individual students medical and emotional needs, and collaboration with community and private mental health providers. *Id.*

E. *An Absent Requirement—Addressing Punishment for Violent Students*

Although counseling plays an important role in helping to change an abuser's attitude about dating violence, it may not be enough to change their abusive behavior. Students who have committed grossly violent acts against their partner also need to realize the consequences of their actions through some form of punishment. Schools give their administrators and teachers a lot of power over students and a wide range of discretion in dealing with student behavior,<sup>149</sup> and such power should be extended or used to allow punishment for violent teen batterers. Some form of punishment is necessary because "[s]tudents who learn that adults and the justice system generally overlook, ignore, or minimize the seriousness of teen dating violence are at greater risk for carrying over a propensity for violence against intimates in adulthood."<sup>150</sup> Moreover, the failure to punish and rehabilitate these students will have a detrimental effect on all students because "[t]he risk of school violence increases when adult supervision is insufficient, bullying and teasing are tolerated, . . . and violent threats are ignored."<sup>151</sup>

The Teen Dating Violence statute does not state what punishment should be administered for teen batterers.<sup>152</sup> The statute should mandate schools to punish offenders in accordance with the severity of abuse the student inflicted. As the discussion below will demonstrate, criminalization, transfer to alternative education programs, and admittance into intervention programs are all appropriate forms of punishment that school districts can employ. Although the juvenile justice system and alternative education programs are not perfect, they are still beneficial in that they separate batterer from victim while conveying to the batterer that his violent behavior will not go unpunished.

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149. Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 HARV. WOMEN'S L.J. 351, 369–70 (2003) (discussing the authority schools possess to punish violent students).

150. *Id.* at 353 (explaining the consequences of failing to punish teen offenders for committing dating violence).

151. Mary A. Hermann, *An Ethical and Legal Perspective on the Role of School Counseling in Preventing Violence in Schools*, PROF. SCH. COUNSELING, Oct. 1, 2002, available at 2002 WLNR 5546253 (warning that failure to address the needs of violent students can increase the amount of violence experienced in schools).

152. TEX. EDUC. CODE ANN. § 37.006 (West 2006) (listing prohibited conduct that shall result in the offending student's "remov[al] from class and place[ment] in a disciplinary alternative education program.").

### i. Criminalization

When a teen batterer has committed abuse so violent that it is legally recognizable as criminal and is punishable with jail time, the batterer should be punished within Texas' juvenile justice system. The purpose of the juvenile justice system is to provide "a more rehabilitative and treatment-oriented program for delinquent juvenile offenders."<sup>153</sup> Violent teens need to not only recognize the seriousness of their misconduct by serving time, but also should have a chance to change their abusive behavior and become better citizens.<sup>154</sup> Unfortunately, criminalization may have a detrimental effect on the teen batterer. Incarceration may cause the teen to become an increasingly violent batterer due to the exposure to more violent criminals.<sup>155</sup>

### ii. Alternative Education Programs

There are two alternative education programs that Texas schools can transfer abusive students to depending on the severity of the abuse they inflicted. An abusive student may be sent to a disciplinary alternative education program (DAEP) if the student's abuse amounts to an assault as defined by the Texas Penal Code.<sup>156</sup> DAEPs are designed to provide disruptive students with an environment where they can gain the same level of academic education that is provided in their home school, as well as provide these students with education to address their behavioral

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153. Keisha L. David, *Black Faces, Brown Faces . . . Why Are We Different Than White Faces? An Analytical Comparison of the Rate of Certification of Minority & Non-Minority Juvenile Offenders*, 2 SCHOLAR 49, 53 (2000) (describing the purpose of the juvenile justice system).

154. See *id.* (emphasizing the importance of rehabilitating juvenile offenders).

The rationale [for creating the juvenile justice system] was that if a juvenile offender could be properly treated and rehabilitated, their outlook on life would change, thus giving them an opportunity to turn their life around.

Rehabilitation would give juveniles a second chance in society, thus enabling them to become successful and more productive citizens. This rationale was distinctly different from that of the adult criminal justice system in that the adult system was more punitive in nature, with the element of punishment as its nucleus.

*Id.* (footnotes omitted).

155. Tiffany J. Zwickler, Note, *Education Policy Brief: The Imperative of Developing Teen Dating Violence Prevention and Intervention Programs in Secondary Schools*, 12 S. CAL. REV. L & WOMEN'S STUD. 131, 141-42 (2002) (discussing the consequences of placing teen batterers in prison). "By being removed from their homes, families and schools, their community connections are cut off and associations with other juvenile delinquents function as replacements." *Id.* at 141.

156. TEX. EDUC. CODE ANN. § 37.006(a)(2)(B) (West 2006); see also TEX. PENAL CODE ANN. § 22.01(a)(1) (West Supp. 2009) (listing the elements of assault under the Texas Penal Code).

needs.<sup>157</sup> If a student's abusive behavior amounts to a sexual assault, aggravated sexual assault, or aggravated assault as defined by the Texas Penal Code, the student can be sent to a Juvenile Justice Alternative Education Program (JJAEP).<sup>158</sup> JJAEPs are required to provide students with a course in self-discipline, which can include instruction on "drug awareness, anger management, and impulse control."<sup>159</sup>

While both of these programs provide the ideal combination of academic and behavioral education, some opponents to these alternative education programs argue that DAEPs and JJAEPs are ineffective and detrimental to the well-being of students.<sup>160</sup> The quality of education received in alternative education programs is also questionable since many alternative education programs do not provide the same honor level coursework and extra-curricular activities found in traditional schools.<sup>161</sup> Students who are placed in alternative education programs experience

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157. MARC LEVIN, DISCIPLINARY ALTERNATIVE EDUCATION PROGRAMS: WHAT IS AND WHAT SHOULD BE (2005), available at <http://www.texaspolicy.com/pdf/2005-12-DAEPs-pb.pdf> (discussing the academic and rehabilitative status of disciplinary alternative education programs (DAEPs)). There are virtually no state requirements for DAEPs. *Id.*; see TEX. EDUC. CODE ANN. § 37.008 (West Supp. 2009) (detailing the requirements for DAEPs).

158. TEX. EDUC. CODE ANN. § 37.011(b) (West Supp. 2009) (explaining that a student can be placed in a juvenile justice alternative education program (JJAEP) if he has committed an offense that would otherwise qualify him for expulsion).

159. 37 TEX. ADMIN. CODE § 348.6(a) (2009) (Tex. Juv. Probation Comm'n) (listing the courses that a JJAEP must cover).

160. MARC LEVIN, DISCIPLINARY ALTERNATIVE EDUCATION PROGRAMS: WHAT IS AND WHAT SHOULD BE (2005), available at <http://www.texaspolicy.com/pdf/2005-12-DAEPs-pb.pdf> (arguing that DAEPs are overused by schools and that there are other methods that can be employed with the same results). For example, instead of relying on DAEPs, teachers can use "time-out, seclusion, and special education classes" to accommodate both the offender and the remaining students in the classroom. *Id.*; TEXAS APPLESEED, TEXAS' SCHOOL-TO-PRISON PIPELINE: DROPOUT TO INCARCERATION 1 (2007), available at <http://www.texasappleseed.net/pdf/Pipeline%20Report.pdf> (arguing that removal of students into DAEPs and JJAEPs increases the students' risk of dropping out and going to prison).

161. Amber Hausenfluck, Comment, *A Pregnant Teenager's Right to Education in Texas*, 9 SCHOLAR 151, 176-77 (2006) (explaining how pregnant teens are subjected to an unequal opportunity to a good education when placed in an alternative education program).

Although comparable to a regular campus in that an alternative education program must "have appropriately certified teachers . . . [and] provide each student the opportunity to attend a 7-hour school day," many alternative education programs do not provide extra-curricular activities or advance placement classes for their students. In today's society, participating in extra-curricular activities and advanced classes is a must for college-bound students and also very important to students entering the workforce.

*Id.* (footnotes omitted).

feelings of isolation and negative social stigma, which can affect the student's learning process.<sup>162</sup> A more severe consequence of placement in an alternative education program is that many students who are sent to DAEPs struggle academically and face an increased risk of dropping out.<sup>163</sup> Undoubtedly, reform in these programs will benefit both the school system and the students that are sent to them. Still, these programs are a viable solution that schools should use in order to separate grossly violent students from their victims.

### iii. Intervention Programs

Psychologists report that intervening at an early stage reduces the chance that teen batterers will continue to inflict abuse because the aggression that is characteristic of a batterer develops over time.<sup>164</sup> Although not perceived as a traditional form of punishment, intervention programs serve the various goals of "justice and accountability, victim safety, and rehabilitation and behavioral changes such as skill building, attitude change, and emotional development."<sup>165</sup> Intervention is an appropriate form of punishment for cases when criminalization or transfer to an alternative education programs may be improper. Intervention can also be used in conjunction with the other two punishment methods.

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162. See *id.* at 179 (explaining how separation of pregnant teens in alternative education programs can deprive students of important opportunities for socialization).

163. MARC LEVIN, DISCIPLINARY ALTERNATIVE EDUCATION PROGRAMS: WHAT IS AND WHAT SHOULD BE (2005), available at <http://www.texaspolicy.com/pdf/2005-12-DAEPs-pb.pdf> (reporting on the detrimental effect DAEPs can have on a student's academic performance). "The Texas Education Agency (TEA) reports that DAEP students have a drop-out rate that is 'over twice the rate for students statewide.' DAEP students also score substantially lower on the Texas Assessment of Knowledge and Skills (TAKS) test than students statewide." *Id.*; TEXAS APPLESEED, TEXAS' SCHOOL-TO-PRISON PIPELINE: DROPOUT TO INCARCERATION 1 (2007), available at <http://www.texasappleseed.net/pdf/Pipeline%20Report.pdf> (labeling the continuum of school-based offenses to criminal activity as the "school-to-prison" pipeline). "Involvement in the criminal justice system can be viewed as a continuum of entry points—from early school-based behavior problems . . . to more serious law breaking and probation violations that can involve the juvenile justice system and, ultimately, the adult penal system." TEXAS APPLESEED, TEXAS' SCHOOL-TO-PRISON PIPELINE: DROPOUT TO INCARCERATION 1 (2007), available at <http://www.texasappleseed.net/pdf/Pipeline%20Report.pdf>.

164. Tiffany J. Zwicker, Note, *Education Policy Brief: The Imperative of Developing Teen Dating Violence Prevention and Intervention Programs in Secondary Schools*, 12 S. CAL. REV. L. & WOMEN'S STUD. 131, 144–45 (2002) (summarizing the professional opinions of psychologists supporting intervention programs for teen offenders of dating violence).

165. *Id.* at 145–46 (explaining the purpose and creation of intervention programs for teen batterers).



There are a number of ways Texas school districts can structure an intervention program to effectively meet the needs of teen batterers. For example, two high schools in Newton, Massachusetts have developed the Adolescent Males Early Intervention Group as a collaborative endeavor to coincide with the prevention program they have developed for young victims of dating violence.<sup>166</sup> A judge can order a teen batterer to enter the group, which holds ten weekly one-hour sessions that provide both an educational as well as an accountability component to address and reform the teen batterer's abusive behavior.<sup>167</sup> The batterer must sign a contract that states that he "will not use violence in his relationships."<sup>168</sup> The program has been so successful that there is a waiting list to enter the group, as parents are requesting judges place their child in the program.<sup>169</sup>

#### IV. CONCLUSION

Schools around the country have a number of issues that they must address in protecting the health and safety of their students, including providing education on drug and alcohol use, gun violence, and sexual harassment. Teen dating violence is an equally serious problem that schools *must* address. Schools can no longer ignore the severity and prevalence of teen dating violence as numerous stories flood the news about teens being abused by their boyfriends and girlfriends.<sup>170</sup>

Failure by school districts to protect their students from dating violence can lead to dire consequences for teen victims. Victims of dating violence

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166. Carole A. Sousa, *Teen Dating Violence: The Hidden Epidemic*, 37 FAM. & CONCILIATION CTS. REV. 356, 368–69 (describing a companion program for domestic violence offenders in Newton, Massachusetts).

167. *Id.* at 369 (providing an overview of the intervention program being conducted in Newton, Massachusetts). The sessions are held at the courthouse in Newton, which may help reinforce the idea that the abusive behavior is a serious offense and will not be tolerated by the judicial system. *Id.*

168. *Id.* (stating the process for the final screening of the teen before being admitted into the Newton program). The program also utilizes parental participation to further the goal of reforming abusive behavior. *Id.* The abuser's parents "must sign a contract stating that if there are further violent episodes the teen will be reported to the authorities for prosecution." *Id.*

169. *Id.* at 370 (illustrating one measure of success for the Newton program).

170. See Jordan Smith, *A Shining Star Goes Dark*, THE AUSTIN CHRON., May 16, 2003, available at <http://www.austinchronicle.com/gyrobase/Issue/story?oid=OId:159800> (reporting on the brutal murder of fifteen-year-old high school student Ortralla Mosley); Nina Burleigh, *A High School Student's Nightmare: Dating Violence*, PEOPLE, Sept. 10, 2007, available at <http://www.people.com/people/archive/article/0,,20060228,00.html> (detailing the abuse of a high school girl that led to her obtaining a restraining order against her then-boyfriend); Robin Abcarian, *Jenny's Story: Parents Were the Last to Know*, L.A. TIMES, Oct. 13, 1991, available at 1991 WLNR 3908927 (describing the tragic story of a family's loss of their teenage daughter to an abusive boyfriend).

not only have to endure physical, verbal, and emotional abuse from their batterers, but they are also susceptible to developing eating disorders, abusing drugs and alcohol, and getting pregnant along with other serious health risks.<sup>171</sup> In the most extreme cases, a victim of teen dating violence can die at the hands of their abusive partner while at school, like Texas high school student Ortralla Mosley.<sup>172</sup> Had a dating violence policy been in place at Ortralla's school, teachers and administrators would have reacted differently when Ortralla complained to security about her boyfriend on the morning of her death.<sup>173</sup> Ortralla's mother, too, would have seen the warning signs that her daughter was the subject of abuse by her boyfriend and could have petitioned for a protective order on her daughter's behalf.<sup>174</sup> Had Ortralla been educated on the wrongness of her boyfriend's violent behavior and informed of the resources available to victims of dating violence, she might have been able to protect herself and would probably still be alive today. Although it is too late for Ortralla, it is not too late to protect other teens from meeting Ortralla's fate.

Schools around the country must seize this opportunity to protect their students and prevent teen dating violence from occurring. Texas has taken the correct step in avoiding another fatal situation by mandating Texas school districts develop and implement dating violence policies.

Including more directive language will ensure that school districts and their employees have a better understanding of how to prepare for and respond to dating violence. Language should be included in the statute that provides school districts with more guidance on the extent of training that should be provided to school personnel, including preventive education that should be provided to students. The statute should also require school districts to provide more information on protective orders and to implement a protocol for responding to instances of dating violence. Finally, the statute should also mandate that the punishment of student batterers be based on the severity of the abuse they inflicted upon their victims.

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171. Jay G. Silverman et al., *Dating Violence Against Adolescent Girls and Associated Substance Use, Unhealthy Weight Control, Sexual Risk Behavior, Pregnancy, and Suicidality*, 286 JAMA 572, 578 (2001) (explaining the correlation between teen dating violence and health risk behavior).

172. Jordan Smith, *A Shining Star Goes Dark*, THE AUSTIN CHRON., May 16, 2003, available at <http://www.austinchronicle.com/gyrobase/Issue/story?oid=OID:159800> (discussing the tragic death of an Austin high school student).

173. *Id.* (recalling how school staff sent both Ortralla and her boyfriend back to class after a violent episode).

174. *Id.* (discussing how Mrs. Mosley was unaware of her daughter's abuse until the school called to inform her of her murder).

Based on the issues created by the stark language of the Teen Dating Violence statute that have been discussed above, a more comprehensive statute should read as follows (changes have been underlined):

- (a) Each school district shall adopt and implement a dating violence policy to be included in the district improvement plan under Section 11.252 and made readily available to students and their parents in student handbooks and other publications.
- (b) A dating violence policy must:
  - 1) Include a definition of dating violence that includes the intentional use of physical, verbal, or emotional abuse by a person to harm, threaten, intimidate, or control another person in a dating relationship, as defined by Section 71.0021, Family Code;
  - 2) Address safety planning by regulating the contact between a victim and alleged abuser, which is to include schedule or school change, as necessary;
  - 3) Include procedures for teachers and administrators for providing students with information on obtaining protective orders and procedures for enforcing protective orders;
  - 4) Establish school-based alternatives to protective orders;
  - 5) Provide annual training for teachers and administrators on identifying incidents of dating violence and appropriately intervening when confronted with such a situation, as well as educate these educators on any misconceptions they may have on dating violence;
  - 6) Include a protocol for teachers and administrators to follow when intervening in a dating violence situation;
  - 7) Provide counseling for affected students, including but not limited to victims and alleged abusers;
  - 8) Require the detention of an abusive student to an intervention program and/or transfer to a disciplinary alternative education program if their conduct amounts to an assault or to a juvenile justice alternative education program if the abusive student's conduct amounts to an aggravated assault, sexual assault, or aggravated sexual assault; and
  - 9) Require awareness education be implemented into the health curriculum of secondary-students which is to educate on the consequences of being a victim or abuser of dating violence and provides information how to identify, report, and respond to dating violence;
- (c) In adopting and implementing this dating violence policy, school districts may and are encouraged to seek the help of outside agencies that are experienced in educating adolescents on dating violence.

Such an instructional statute will reduce much of the confusion that Texas school employees are currently experiencing after the enactment of the Teen Dating Violence statute, thus providing a more prepared and informed force for fighting a problem plaguing schools around the country. Along with stronger language in the Teen Dating Violence statute, there needs to be stronger support from schools. Words alone will not be successful in combating the prevalent enemy of dating violence.